WILD AND SCENIC

RIVER CONSERVATION

IN

NEW ZEALAND

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ABSTRACT

This thesis aims to critically evaluate New Zealand's wild and scenic rivers policy, a policy introduced in 1981, after extensive research including an examination of a similar policy in the United States. Under the New Zealand policy, water conservation orders can be placed on rivers to protect outstanding wild, scenic or recreational characteristics of those waterbodies. This thesis does not set out to prove or disprove a particular hypothesis, but does have several specific goals.

The development of the conservation movement in New Zealand is outlined as a background to the introduction of the policy. As part of this, definitions of both 'conservation' and the 'conservation movement' are given. The place of river conservation in this development is also discussed. The context of the introduction of the policy is also examined, illustrating that many other Government policies of the period were development oriented. The actual policy itself is examined, with particular reference to the methods by which it works and the deficiencies it is seen to have. Possible ways by which the deficiencies can be remedied are also discussed.

To illustrate these points as they relate to particular rivers, two individual case studies are examined, of the Motu and Rakaia Rivers, both of which are now protected by National Water Conservation Orders. Finally, in conclusion it is discussed as to what it is that are perceived as the threats to rivers from which they are being protected, whether these threats are real and whether, if so, they are increasing or declining in significance. From this it is discussed whether or not New Zealand actually needs such a policy.

CHAPTER ONE

INTRODUCTION

On the 23rd of October 1981, a landmark in water conservation in New Zealand occurred with the passage of the Water and Soil Conservation Amendment Act. This act, often referred to as the "wild and scenic rivers legislation', introduced a system to protect rivers, lakes, streams or parts thereof because of outstanding wild, scenic, recreational or other natural characteristics.

The wild and scenic rivers policy, as established by the act, allows for water conservation orders to be placed on rivers and lakes. These orders restrict the types of development permitted, without necessarily prohibiting all of it. For example, a minimum flow can be established by a conservation order to protect fisheries or white water qualities, with all surplus water exceeding that amount being available for irrigation needs.

Orders can be in the form of either National Water Conservation Orders or Local Water Conservation Notices. A National Order is granted for rivers considered (by the relevant Minister) to have outstanding characteristics of national importance. Such orders are now made by the Minister for the Environment, after a lengthy process of hearings, and legalised by an Order-in-Council. However, up to 1986, the Minister of Works and Development was responsible for conservation orders. National orders are binding on the Crown, thus prohibiting even development projects by Government Departments on protected waterways. The key term, here, is "outstanding". In order to receive national protection, applicants must prove to the Minister that the characteristics for which the river is being protected are

outstanding (i.e. almost unique and of superb quality). Such orders can be revoked by the same process by which they were granted.

Local Water Conservation Notices (LWCN) are granted for rivers whose characteristics are considered to be of local rather than national importance, and are therefore not considered to be outstanding on a national scale. Local Notices are granted by the relevant regional water board, and can also be revoked by it. Such notices are not binding on the Crown. They prevent private industries and landowners from developing the waterbody, but governmental bodies can still undertake works on a river protected by an LWCN.

The decision whether an application for a conservation order should be processed as national or local is made by the Minister. Applicants merely apply for the "making of a water conservation order in respect of the X river" [Acclimatisation Societies, 1987:1]. If it is decided that a National order is warranted, the Minister will appoint a tribunal to conduct a public hearing to hear evidence from all concerned parties. If a local notice is required, the Minister will pass the application to the relevant water board.

Thus New Zealand's wild and scenic rivers system is one whereby water conservation orders can be placed on rivers, streams, lakes or parts thereof in order to protect them as far as possible in their natural or present state.

GENESIS OF THE POLICY

The wild and scenic rivers legislation was passed as an amendment to the 1967 Water and Soil Conservation Act. However, it is unique amongst amendments as it contains its own object clause, making it similar to an independent act rather than an amendment. It is

obviously meant to be considered separately from the principle act. The object is stated as "to recognise and sustain the amenity afforded by waters in their natural state" and to "ensure the preservation and protection of the wild, scenic and other natural characteristics of rivers, streams and lakes". This does not correlate with the object of the 1967 Act which was to "make better provision for the allocation, use and quality of natural water" or to promote the multiple use of water. Conservation was seen having a number of definitions in the original act, and "non-use", which is how conservation is predominently viewed in the amendment, was only one of many. The primary interpretation of conservation in 1967 was one of conserving resources for future use rather than non-use. The 1967 legislation was primarily a development act, outlining the methods and procedures for the use of soil and water resources, where conservation was taken to mean the wise use of resources, preventing their depletion and allowing for sustainable future use. Thus, the 1981 amendment added clauses supporting a preservationist view of conservation (i.e. non-use) to an act originally and specifically intended to manage the use and development of water and soil resources.

The first proposals for a wild and scenic rivers system originated in 1977, four years before the amendment act was passed. This was the same period during which proposals were being put forward for the National Development Act, which is the complete antithesis of a preservation act. This development act is designed to "fast track" the procedure for getting approval (and for granting water rights) for large development projects, such as the Clutha River hydro-electric schemes, making it unnecessary for developers to go through numerous hearings. The National Government of the time appears to have been

following two very opposite policies simultaneously: development and preservation. An obvious question to ask, is why this was so.

Firstly, there is the possibility that there was genuine concern for the state of New Zealand's rivers amongst politicians and policy makers and that the wild and scenic rivers legislation was an attempt to protect the natural characteristics of such rivers. Such concern was expressed by environmental groups at this time who saw the continued development of rivers, especially for hydro-electricity, as a threat which would result in few remaining in their natural state. The 1978 National election manifesto stated that "National will identify and give appropriate protection to wild and scenic rivers". Thus, by 1981 when National was facing another election, the Government was forced to introduce such a policy as promised earlier to fulfil that manifesto and to retain the vote of the conservation movement. This aspect will be dealt with in great detail in later chapters.

Alternatively, policy makers might have seen the Clutha development as satisfying electricity needs for many years and that the Government could afford protection for a number of rivers, yet not as many as to restrict further development.

One explanation as to why the legislation was introduced when it was, may have been that it was to appease environmental groups while the National Government's Think Big projects, introduced under the National Development Act, were proceeding. This opinion was voiced during the debate surrounding the introduction of the Water and Soil Amendment Act, especially by opposition M.P.s in Parliament. The bill was referred to as a weak attempt by Government to protect rivers and that its real purpose was to appease voters and the environmental lobby. If the Government had been so concerned, rivers should have

had separate legislation of their own, or at least be covered by an act not associated with the Minister of Works and Development. These possible explanations will be examined thoroughly in a later chapter.

CHARACTERISTICS OF THE SYSTEM

New Zealand has had such a method for protecting rivers for over seven years and yet only three rivers and one lake are protected (as at June 1989). This could indicate that the process for designation takes up too much time. The conservation orders to date have taken between two and five years from application to implementation. The reason for such length is the system's complex procedure. There are several steps to be followed, including up to four separate hearings. However it is not always the hearings that take so much time, but the long periods between. Figure 1.1 shows the simplified procedure only as far as the Planning Tribunal hearing. There are, in fact, two further hearings beyond this, in the High Court and Court of Appeal, as will be discussed later in Chapter Five.

It is open to debate, however, whether or not this length illustrates a deficiency in the system. With such a number of available hearings, all possible evidence is heard, and all aspects of the argument put forward. However, if there was less time between hearings, the process would be speeded up with no loss of efficiency.

One omission with the legislation lies with the powers given in water conservation orders. Such orders are to protect the instream values, and as such only include the actual water. No authority is given to control surrounding land, which often enhances the instream values of a river. It can be the characteristics of the surrounding land that create the wild, scenic or other natural characteristics for

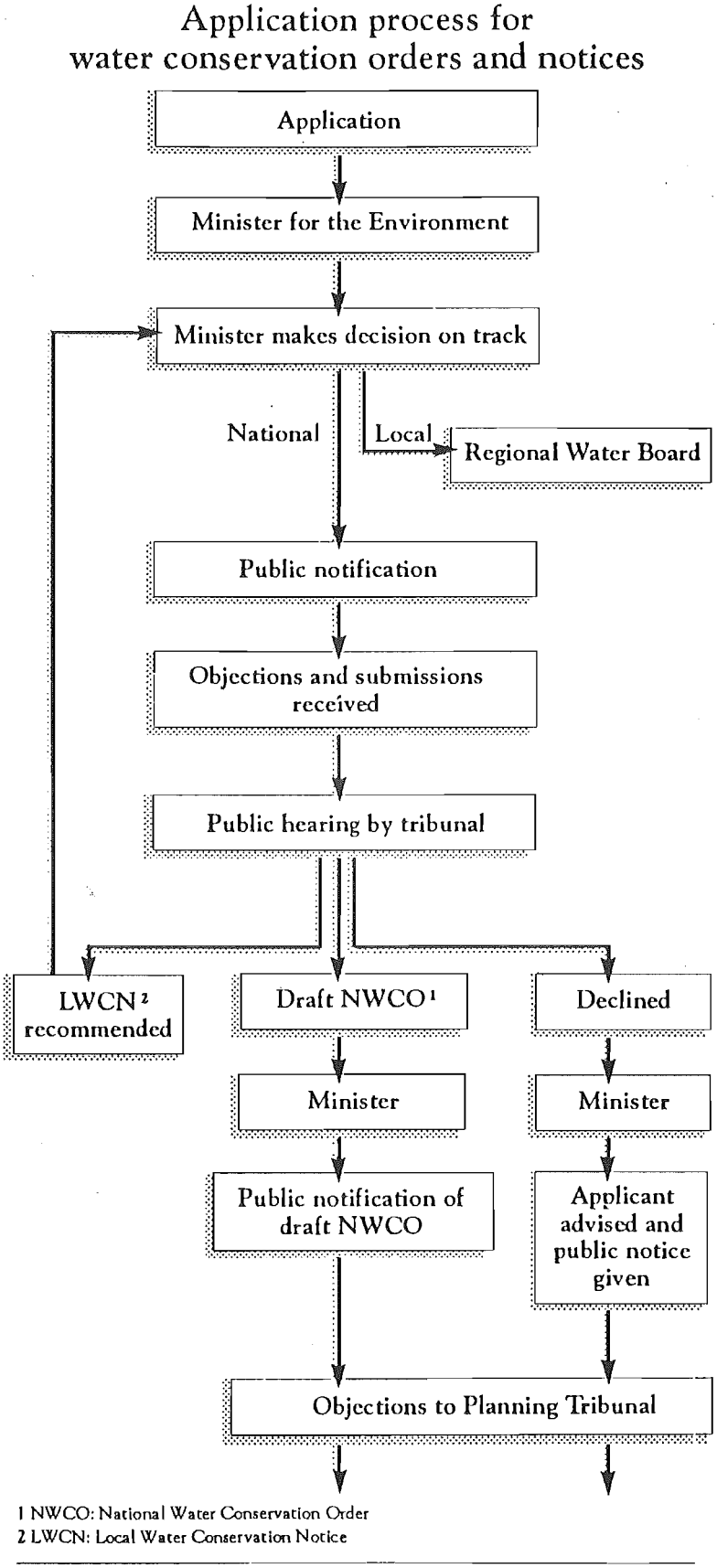


Fig 1.1 Application process for NWCOs and LWCNs

Source: Ministry for the Environment publication, Water Conservation Orders: A Guide to the Public (Wellington, 1988)

which an application for a conservation order would be lodged. As the system stands, a conservation order can be placed on a river with bush clad banks because of its scenic qualities, yet the order has no control over that bush, the very reason for the order's existence, and the banks can be legally clear-felled. A potential solution lies with the Q.E.II National Trust which can place Open Space Covenants on land to protect its natural characteristics. If these could accompany a water conservation order, then both land and water would be protected. This problem may be solved by the Resource Management Law Reform (RMLR) currently underway, which will redraft all existing resource management statutes into one Resource Management and Planning Act. The wild and scenic rivers legislation will be included in this and the Ministry for the Environment has indicated that this omission in the legislation may be remedied. This will be discussed in Chapter Six.

Only a restricted number of bodies or individuals are eligible to apply for water conservation orders. According to the Act "any public authority, Minister of the Crown, or statutory body whose functions or powers relate to any aspect of water or soil conservation" can apply. This is a beneficial charactistic, as many small organisations would not be able to afford to carry an application through the full procedure. As it is, most of those bodies eligible to apply, do not, and most applications to date have been made by the New Zealand Acclimatisation Societies . By mid-1989, twenty applications for conservation orders had been made, with four being successful with sixteen still in process. However, it is believed that there are only approximately ten more rivers for which the Societies want protection [Acclimatisation Society Statistics]. Groups unable to apply can, of course, lobby one of the eligible

parties to apply for them.

There is no legal definition of "river" in any of the relevant legislation. If the act does not define a river, then what exactly does a conservation order protect? The borders of protected areas must therefore be very difficult to determine, especially in the case of rivers which have highly fluctuating levels such as the Rakaia. In the case of Lake Wairarapa, the border of the protected area was taken to be where aquatic vegetation became mainly terrestrial. This included much of the wetlands, areas not meant to be protected by water conservation orders!

The cost of applying for a water conservation order (especially a NWCO) and following it through to completion is high and would prohibit any small body (if eligible) from attempting it. The cost to the Acclimatisation Societies of the Grey River conservation orders, still to be completed, is in excess of $19,000.00. [Personal Communication, 1989]

Conservation orders are not necessarily permanent. Both national orders and local notices can be revoked. Thus, should a river gain importance for hydro-electricity potential, the protection can be removed, again illustrating the context of development versus preservation. This point may be important with regard to the Motu River. That river was on the Ministry of Energy's list of rivers with hydro potential. After initial surveys were made and the application for a NWCO lodged, plans to develop the river were dropped. However, the Motu River is still on the original list.

It should also be mentioned that under this or any other act, no automatic protection is given to rivers in National Parks. Water rights can be granted for these rivers and to be protected in their own right, conservation orders must be placed on them.

INTERNATIONAL COMPARISONS

New Zealand was by no means the pioneer in this area of conservation. It was on the United States wild and scenic rivers policy that New Zealand's was modelled and as such warrants introduction at this point.

By 1968, in the U.S. many rivers had been dammed or developed in some way, and fears were held for those remaining in their natural state, especially by the American Rivers Conservation Council and the Environmental Policy Centre. "Since 1824, Congress had passed laws to develop thousands of streams and now a law is needed to save some of the best of what remained" [Palmer, 1986:135]. In 1968, the National Wild and Scenic Rivers Act was passed which classified rivers as "wild", "scenic" or "recreational" depending on the amount of development they had undergone. Also, under the act, eight rivers were given automatic protection. This is different from the New Zealand legislation where no river was included in the act itself for protection. The American system has now been in existence for over twenty years and a total of 119 rivers or 9,260.2 river miles have been protected, with the majority being classified as "wild".

As early as 1957, it was suggested that a system where rivers were protected for recreational purposes was needed. At a meeting of the Select Committee on National Water Resources, this was formally called for. This request was included in the Committee's report to Congress which was adopted and became the first major proposal for a national rivers system. With the appointment of Stewart Udall as Secretary for the Interior, a supporter of river conservation, the system became reality. In 1964, the Wilderness Act was passed giving

protection from development to public lands. This set the scene for the rivers act, which would give similar protection to waterways. The first draft of the bill was introduced in the same year and after four years of redrafting and argument, the Act was passed, and signed by President Johnson on 2nd October 1968.

There are several major differences between the systems of the two countries. Firstly, the U.S. legislation lists eight rivers for protection, whereas the New Zealand legislation does not, and it was over two years after the latter legislation was passed that the first conservations order was granted. Secondly, the methods of designation are different. The U.S. rivers are given one of three classifications: wild, scenic or recreational, depending on the amount of development they have undergone. New Zealand has no such designations. Water Conservation orders are granted for a river, and it is these orders which specify the features for which the river is to be protected. In New Zealand, a river can be protected in one of two ways: an order can be granted covering the entire river passage, protecting it from development during the term of the order, or specific features of the river can be protected by the order: for example, a minimum flow can be established to preserve white water qualities.

A third difference is that under the American system, land is protected as well as water. Section VI of the Wild and Scenic Rivers Act allows for the acquisition of land along the river by the Secretaries of the Interior and of Agriculture. Up to a quarter mile of land on each bank may be purchased to help maintain the river in its wild state. No more than 100 acres of land may be purchased, on both sides per one mile of river. Land owned by the state can only be given by donation and Indian land can only be given with tribal

permission. Private landowners can retain ownership only if its use is compatible with the river designation. Classification also controls federal use of federally owned land. This is a clear difference from New Zealand's system as it deals only with the water within a river.

The American system has a definition of "river". However, as with the New Zealand system, it does not appear to define clearly the borders of a river. The definition is "... a flowing body of water or estuary or section, tributary or portion thereof, including rivers, streams, creeks, runs, rills and small lakes." [Palmer, 1986:13]. With such diversity the result should be "a system that truly represents the best of (America's) rivers" [Ibid]. This American influence over the New Zealand policy will be discussed later, particularly in Chapter Three.

AIMS OF THIS THESIS

This thesis will set out to evaluate the New Zealand wild and scenic rivers policy as a management tool designed to reach a specific goal: the preservation, for future generations, of New Zealand's wild and scenic rivers.

The basic aims of the thesis can be classified under four separate headings:

(1) An appraisal of the policy. This will be explained in two chapters, Three and Four. One will analyse the genesis of the system, concentrating on when and how it was introduced and the circumstances surrounding the introduction. The same aspects of the U.S. system will be examined. Differences between the two may indicate reasons why the New Zealand system developed differently from

that of the U.S. The second chapter concentrating on the policy, Chapter Four will examine how it operates, what its apparent drawbacks and deficiencies are, and what, if anything, can be done to remedy these. Whether or not the system works to the expectations of its supporters and architects will also be examined. Again, comparisons will be made with the American system.

(2) To examine the context of the policy. That of development versus preservation surrounding the wild and scenic rivers system. This will be undertaken in Chapter Two. This will focus on the development of the conservation movement as a whole in New Zealand, illustrating why the 1980's was the era when the system was introduced, and when other countries such as the U.S. and Canada, had similar systems much earlier. Questions to be explored will include when and why the conservation movement was aroused; and why rivers became a conservation issue, which will illustrate the circumstances under which the system has been developed.

(3) To make an examination of case studies. In Chapter Five there will be two of these focussing on the Rakaia and Motu Rivers. Examination of how water conservation orders were granted for each and the debates they caused will illustrate earlier points made about the system. This chapter will also show how these two rivers set the precedents for future conservation orders, with the Motu being the first to be protected and the Rakaia, having gone through the fullest possible procedure.

(4) To study the implications of the policy. Chapter Six will look at the implications of the system and whether or not it is really needed. The rivers under threat from development will be compared with those listed in the National Inventory of Wild and Scenic Rivers, published in 1984, as being in need of protection. This will

illustrate whether such rivers actually need protection. How the system is likely to change under RMLR will also be discussed. Thus, a statement can be made as to whether New Zealand needs a wild and scenic rivers system, and if so whether the existing one is the most suitable.

CHAPTER TWO

RIVERS AND THE CONSERVATION MOVEMENT IN NEW ZEALAND

The aims of this chapter are to define both "conservation and the "conservation movement" and to examine the place of rivers in their development. Rivers have not always been a conservation issue, and when they first became so, in the middle of this century, it was not because of threats to their wild, scenic and other natural characteristics. The concept of conservation that underlies the 1981 legislation is not the same concept underlying other river legislation. It is therefore necessary, firstly, to attempt to give a definition to the term "conservation".

CONSERVATION: WHAT IS IT?

There is no single definition of "conservation", as it is not a static concept. Dasmann [1976:2] describes it broadly as "a way of looking at the world and a way of action based on that point of view". But he also suggests [1975:5] that it is now taken to mean 'the rational use of the environment to provide the highest sustainable quality of living for humanity" or the saving of natural resources for future consumption. This highly anthropocentric view of conservation is supported by O'Riordan's [1977] theory of technocentrism which suggests that people's actions, for example towards the environment, are perceived only with the view of the benefits that such actions will have for people. Little consideration is given to the effects of the environment except in human terms. If people want to transform a forest into a suburb or a river into a lake, the act is considered in

the context of those peoples' social and political culture. Progress, efficiency, rationality, control: these form the ideology of technocentrism. Within such an ideology, conservation is seen as the orderly exploitation of resources, for the greatest good to the greatest number of people for the longest time or "the control of the earth for the good of man" [O'Riordan, 1976:12]. Such a mode of thinking clearly reflects the definition of conservation as being rational or "wise" use of resources. It is also the concept of conservation that underlies the 1967 Water and Soil Conservation Act which was intended to manage the consumptive use of water resources for the benefit of people.

This appears to be a widely accepted definition of conservation, especially amongst those who are involved in the development of resources, such as farmers taking water for irrigation purposes. In New Zealand, under the 1967 Act, water rights have to be granted for such development, rights which place limits upon the amount of the water that is permitted to be abstracted. Under this definition such an act is conservation.

Another popular concept of conservation favours it as being the non-use of resources where such a resource is conserved by severly restricting consumptive use. Supporters of this definition have been referred to as belonging to the "preservationist" school of conservation, indicating that such a definition involves the "locking away" of resources with little or no consumptive use of them permitted. This definition of conservation favours the protection of wild species and places, whilst usually permitting recreational and education activities in the area. While supporting conservation as meaning "non-use", members of this school do not necessarily oppose the production and exploitation of resources from other areas. It is such a

definition of conservation that underlies the 1981 Amendment to the 1967 Act and the wild and scenic rivers policy which restricts and manages the use of water in such a way as to protect its natural characteristics. This view of conservation is almost the antithesis to the "wise use" definition and just as technocentrism supported that definition, O'Riordan's ideology of ecocentrism supports the preservationist definition. Ecocentrism is the opposing view to technocentrism and is a non-anthropocentric ideology where natural ecosystems are seen as having their own intrinsic value. It is felt by ecocentrists that natural ecosystems should be protected, not for the benefit of people, but as a biotic right. This ideology clearly supports the preservationist school of conservation. This philosophy encourages people to be more conscious of their rights and responsibilities towards nature, and also illustrates that nature has no morality nor power of conscious reason and thus cannot be wounded by the misdeeds of people. O'Riordan claims that because of this there is no biological justification for conservation. Conservation is based on human value systems. It is humanity that will miss species and not nature. The same can be said for wild and scenic rivers. Such rivers are protected only because people will miss the wild and scenic characteristics, not because the destruction of such characteristics will harm nature. Conservationists admit this by claiming that such rivers are being protected for present and future generations.

The implications of this bioethic principle are now being taken into account in environmental policy making. Much early conservation in New Zealand, at the end of the nineteenth century, was concerned with the designation of alpine areas as national parks. However the primary motivation was not bioethical but commercial. The areas to be protected were scrutinised for economic potential, (particularly for

farming and forestry). It was obvious that there was little such potential, so such areas were protected. They were perceived as useless for anything except "conservation" and tourism.. More recently bioethical considerations have been taken into account and protection is now often given to potentially exploitable regions, the Rakaia river being a good example. Thus, bioethics stresses the humility of people in the face of nature.

Thus there are two distinct views of conservation, one favouring the wise use of resources, or the utilitarian view, and the one favouring non-use, or the preservationist view. These two views are not, however, opposites, but can be viewed as the poles at each end of a "conservation continuum", as depicted in figure 2.1. On this scale can be placed conservation groups, conservation legislation and different views of conservation. For example, if water and soil legislation was placed on this continuum, the 1981 wild and scenic river legislation would be placed at point A, as it legislates for the non-use of designated river areas; the 1967 Water and Soil Conservation

Fig 2.1 The Conservation Continuum

Act would be placed at point B, as it sets out guidelines for the control, use and management of water for the benefit of present and future generations. This act also introduced the concept of multiple use, whereby the same water can be used for several different activities, often at the same time. The 1941 Soil Conservation and

Rivers Control Act, which established guidelines for the control of floods and soil erosion by the building of stopbanks and establishment of catchment control authorities an act which includes both non-use (where conservation itself is taken as a land use and where areas of land are set aside to prevent flooding) would be placed at point C. O'Riordan also depicts [1981:5-6] conservation (included in the term "environmentalism"), as being a spectrum with ecocentrism on the extreme left and technocentrism at the extreme right and states that the primary view of conservation "is shifting from right to left" on this spectrum.

Thus conservation cannot be viewed as a single concept. It must be viewed as a continuum, with different views of conservation being placed on that continuum between the preservationist school at one end and the utilitarian school at the other. The conservation of rivers has been placed at different places on that continuum over time, and, as outlined earlier, the different statutes governing the conservation of rivers have each used different interpretations of the term. Why this is to and how the conservation of rivers and the conservation movement have developed will be examined next.

RIVER CONSERVATION IN NEW ZEALAND AND THE ROLE OF THE CONSERVATION MOVEMENT

i) What is the "Conservation Movement"?

Before examining the role of the conservation movement in the conservation of rivers in New Zealand, a definition of the conservation movement is needed. Mosley [1988:178], in referring to the Australian situation, states that for a term so widely used as 'the conservation movement", there is remarkably little unanimity as to its meaning. He

states that members of environmental groups are certainly included and that the term should include the environmental bureaucracy and leading political advocates of conservation. However difficulties in definitions arise when it is asked whether or not the term should include individual members of the public, of which there are several categories. There are those willing to show their concern for conservation issues, often vociferously be joining marches, writing letters and organising petitions; those who are less active in their support and who are willing to sign such petitions and donate funds towards conservation concerns, and those who, although not fitting into either of these categories, will cast their vote at election time depending on the environmental policies of the parties concerned. Although the hardest group to measure, and the least obvious, this latter group is potentially the most crucial to the conservation movement in a democratic society.

Such a concept of the conservation movement, as being comprised of both organisations and individuals in separate capacities, is relevant for the New Zealand situation, and this study of wild and scenic rivers. However, where Mosley expresses doubt as to whether the conservation movement should include members of the public, other authors suggest that they play a vital part in the movement. O'Riordan [1976:252-4] states that there are several types of individual, and that any environmental issues will impinge on these people in different ways. There will be those who are unaware of the problem, usually because it does not appear to affect them, some will recognise the issue but will resign themselves to it and do little to support the conservation movement. In figure 2.2 these are depicted as "passive" individuals. A small group will seek to do something about the issue. These are the "active" individuals and undertake

traditional forms of protest such as letter writing, joining protests or forming pressure groups. There are then those who "want to show general support for conservation" [Ibid:254] without participation. These often join nationally organised public interest groups, leaving the work up to the Executive. These are depicted as "inactive" individuals.

O'Riordan also indicates in another work that there are a variety of environmental groups [1979:410], although all are equally cohesive "because their membership shares values (and) agrees to means of pursuing their aims" [O'Riordan 1976:253]. He argues that there are three types of group, all of which have a different role to play in the conservation movement. Public interest groups are usually formed on a national scale and are established "to fight for principles and objects which ... their membership believes are for the good of society at large" [Ibid, 1979:410]. Such issues would include the maintenance of water quality, the conservation of "beauty" [Ibid] and wilderness areas and the protection of endangered natural habitats and species. O'Riordan suggests that they are organisations whose purpose is to help everyone whether they are a member or not. They fight to change or amend the system and often press for institutional reform. Their tactics are often more policy orientated than issue orientated. In New Zealand such bodies would include the Royal Forest and Bird Protection Society, the Save the Rivers Campaign and the Native Conservation Council. Such groups would also include Government departments and statutory bodies, such as the Department of Conservation and Ministry for the Environment, which design and implement policies for the nation as a whole.

On a smaller scale, are private interest groups which seek to advance the well being of its own members, rather than society at

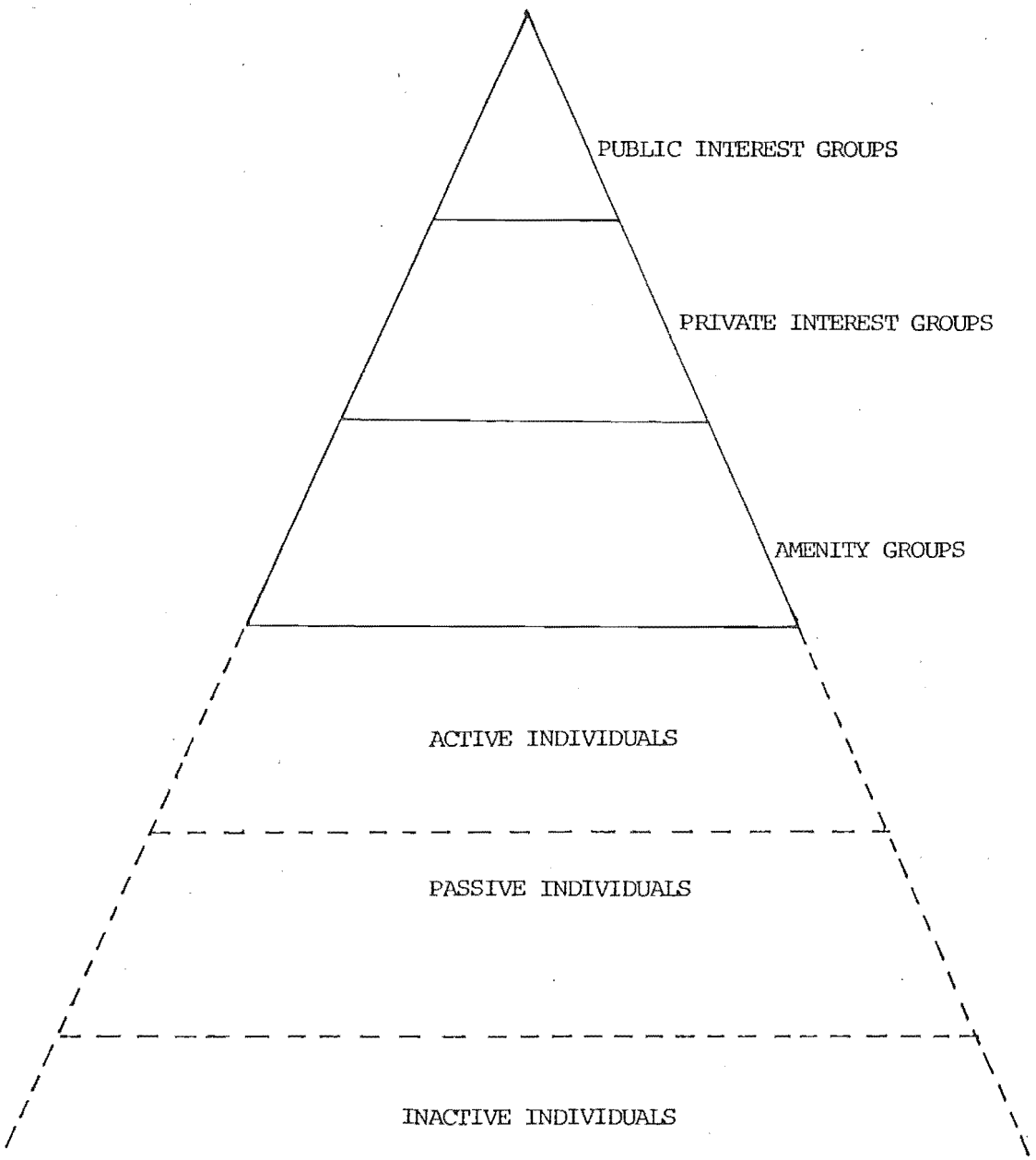


Fig 2.2 The Conservation Movement Pyramid

large. These are formed on both national and local levels and an example of such a body is the New Zealand Canoeing Association. There are also amenity groups, formed usually only on a local scale to stop a development which is seen as being a threat to the general amenity of its surroundings. Such groups often appear after any such development is announced but before it is implemented. Most of the "Save the ..." and "Stop the ..." groups are of this kind, often set up to combat one single issue.

Thus the conservation movement can be depicted as a pyramidal hierarchy (see Fig 2.2) with a broad base of individual members of the public, with differing amounts of involvement and a narrow and powerful peak of the nationally based public interest groups. The upper sections of the pyramid are easily definable, but this is not the case with the movement's broad base of public support, as it is difficult to clearly define between those individuals that are active and those that are not.

ii) The Conservation Movement in New Zealand

This section will illustrate how the conservation movement in New Zealand has developed since it originated in the late nineteenth century. It will discuss the changing emphases of the movement and introduce a model to explain these changes and will show when and why rivers have become a conservation issue.

Systematic European colonization began in New Zealand in the 1840s and by thirty years later the European population was located primarily in coastal regions and much of the country was unsettled and largely inaccessable. Much of New Zealand was still in its pre-European state with resources such as forest largely unexploited [Wynn, 1977:124]. To encourage expansion away from the coasts, the colonial

treasurer, Julius Vogel, introduced a plan to stimulate development. Roads, railways, bridges and communications were established and the population moved away from the coasts. "The assault on New Zealand's environment quickened" [Ibid:125] and the colony's landscapes were transformed. Deforestation played a major role in this. However, there were a handful of settlers and politicians who stressed the need for forest conservation in New Zealand, although there were different motives for wanting "conservation". The politicians views of conservation lay at the extreme right of the conservation continuum (see Fig 2.1) and saw the need for careful management of the resource, in order that there would be sufficient for future uses. However, some settlers supported a concept of conservation that lay at the opposite end of the continuum. It was felt that processes of environmental disturbance similar to those documented in older settled areas of Europe and America were operating in New Zealand and claimed that "the fertile young colony was in danger of becoming a desert" [Wynn, 1977:125]. Support from this group was for a preservationist conservation that entailed the locking away of areas of forest with no milling permitted. Thus the debate between the two ends of the conservation continuum began with the first conservation issue in New Zealand and, as will be seen from examples to come, has continued into conservation issues today. However, in the 1870's, there was very little support for the preservationist conservation of forests and an act created to establish State Forest Parks in 1874 failed and was repealed two years later.

The majority of support for the Forests Bill and those who recognised the long term benefits of conservation were largely from the upper, well educated classes of British settlers. The majority of migrants, from the lower working classes saw forests in an individual

and self centred light where importance was given to the present and not the future. As Springer [et al, 1976:203] suggests "those whom affluence has eluded are likely to regard such issues as luxuries until more elemental needs are satisfied".

This early conservation emphasis on forests was paralleled by the development of an established conservation movement in both the United States and Australia. In the United States the middle and upper class members of recreational user groups (such as fishing and hunting associations) were concerned about the destruction of forests and other recreational lands. "Conservationists sought to use the legal and political power of the state to protect forest lands from resource exploitation". As in New Zealand, there were two conservation proposals: preservationists favoured the protection of undeveloped habitats so that the public could gain historic, scientific and recreational values from natural areas; consumptive users, such as farmers and miners favoured conservation for utilitarian reasons. Both, however hoped to lessen the rate of natural resource exploitation in the U.S. In 1881, the Forest Reserve Act was passed, setting aside 1,250,000 acres of natural forest as a reserve and the Forest Management Act of 1897 specified the uses of that reserve - mining, grazing and lumbering - controlled by Government permit. That these uses were permitted caused preservationists to criticise the reserve management for being unduly influenced by utilitarianists and that these uses were so restricted caused utilitarianists to criticise it for being unduly influenced by perservationists.

In Australia, the situation was very similar. The clearance of forests for agriculture continued long after the better lands had been occupied, and deforestation occurred on a vast scale well into the twentieth century. The first reserves were created at the same time as

those in New Zealand - the 1870's.

Thus in the nineteenth century the beginnings of a conservation movement were appearing not only in New Zealand, but in other parts of the world also. This movement appeared to be made up of middle and upper class well educated people and their views of conservation spanned the whole continuum from preservationists to utilitarianists.

However, debate between preservationists and utilitarianists was not prominent when the major conservation issue was the creation of national parks and reserves, the first of which, Tongariro National park, was created in 1894. The core of what became this park was offered as a gift in 1887 by Te Heuheu Tukino, the paramount chief of Ngati Tuwharetoa on whose tribal land the area, consisting of three volcanoes, Tongariro, Ngauruhoe and Ruapehu, was located. Tukino was attempting to rebuff rival claims of ownership of the land on which these sacred volcanoes stood and he was concerned, too, with protecting the adjacent area from subdivision and settlement. It was 1894 before the park was recognised in law. The designation of this park was followed by: the creation of several others as well as many reserves, later to be designated national parks. The National Parks Act of 1952 outlined the procedure for designating National Parks and the uses permitted therein. Several parks were created after that, but Roche notes [in Pearce:53] that "more than half of the total area of all national parks in 1980 had been gazetted as Parks or Reserves as early as 1907". By 1986, New Zealand had 2,157,800 hectares of national park or 8% of the country's surface area [Ibid:54]. This appears impressive until it is realised where those parks are situated. Assigning use, value and ownership to the new lands was an integral part of the colonisation process, and as one Member of Parliament stated during the debate over the Tongariro Act, the land as "almost useless as far as

grazing is concerned and as such was of little use for any farming" [Lucas, 1979:3]. This is the same for the other early national parks, nearly all of them are situated in mountainous areas (especially those in the South Island) that could not be used in any way for agricultural production and were therefore of little use to developers and farmers, making them ideal for a national park as productive land was not being consumed for preservationist reasons. Thus with the issue of national parks there was no debate between utilitarianists and preservationists as to what form of conservation should prevail as there were no resources on the land for there to be wise use of to provide for the future. The preservationist view was dominant as areas of land were designated to keep them in their natural state, not, however, because of what O'Riordan [1976] refers to as "bioethical values". Again, it should be noted that this issue in the development of the conservation movement was paralleled both in Australia, where the first national park, at Port MacKay, south of Sydney was designated "for the use of the people as a National Park" [Mosley, 1987:17] in 1879, and in the United States where the first national park in the world, Yellowstone, was designated in 1872.

Changes to the structure of the conservation movement appear in the middle of the first half of the twentieth century and by the 1940's the movement was broadening from including only preservationists and utilitarianists, the latter perhaps being the most influential, to include a more scientific expertise who, rather than holding views of conservation at the extremes of the continuum, held views in the middle. This is evident in the passing of the 1941 Soil Conservation and Rivers Control Act, which also illustrates that Government was becoming increasingly involved in conservation issues.

With disastrous flooding and erosion in Hawkes Bay in the

1930's the problem of soil erosion was bought to the attention of New Zealanders - including those in Parliament, and the possibility of action to help prevent it was also introduced. Parliament recognised these threats and in 1941 the Soil Conservation and Rivers Control Act was introduced into Parliament. The Act was passed almost unanimously and established the Soil Conservation and Rivers Control Council. Under its direction, catchment authorities were established, and were charged with the responsibility of retaining soil in place "as well as controlling floods" [Ibid:205]. After the war representatives from many Government departments were on the Council and it successfully prevented much soil erosion in New Zealand.

Despite the conservation movement growing, and including people and groups holding views of conservation from all parts of the continuum, as yet the New Zealand conservation movement was not "popular": the majority of the public was not yet interested in conservation issues. Such popularity was not to come until the 1960"s, with the threat posed to Lake Manapouri, in Southland and to the Aratiatia Rapid and the Waikato River, by hydro-electric power developments. As with ealier developments in the conservation movement, this increased awareness of conservation issues by the public in the 1960's and was paralleled by a similar increased popularity in the rest of the western world, in particular the United States. As Humphrey (et al) [1982:111] states:

> In the early 1960's the intellectual thrust of the environmental (movement) started to take a ... different path. Scientists were becoming increasingly concerned about the consequences of social growth for the survival of the biosphere and they were beginning to step out of their traditional intellectual roles into the realms of policy analysis. Their concern attracted the attention of the mass media and sparked a social movement that challenged the traditional patterns of growth ... The environmental revolution was indeed becoming a force in western societies such as the United States.

Springer (et al) [1976], in a study of public opinion and the

environment, also noted the great rise to prominence of environmental issues in the 1960's stating that "the environment had arrived" as a major concern and Time magazine stated it as being "the Issue of the Year". The speed at which ecological issues burst into public awareness was very rapid. For example, in America, a comparison of Gallup surveys taken in 1965 and 1970 reveals a 300% increase in the percentage of people who identified pollution among the problems they most wanted the Government to attend to during the following two years.

Thus the increased public awareness of conservation issues in New Zealand in the 1960's was part of an increased worldwide understanding of environmental issues. A factor taken into account for this increase by many authors (Springer, et al [1976]; Humphrey, et al [1982] for example) is the mass media which had clearly "found" the environment in the 1960's [Springer, et al 1976:207]. One analysis of the articles appearing in the major weekly news magazines, found the environment and pollution the subject of 109 articles in the 1960's,; eighth among 14 major issues [Ibid]. By 1970 the coverage had increased markedly, with only two other topics (campus unrest and Vietnam) being given more coverage. Other evidence indicates that the media plays an important role in passing information about enviromental issues and events to the public. When asked where they recall hearing about pollution or environmental damage, 73% of a sample of North Carolina residents named television and 62% named newspapers [Ibid]. This may also indicate why the conservation movement appears to be largely made up of those with higher socio-economic status, "given the relatively high level of media attentiveness among this group". However, as Springer suggests, this media induced awareness idea raises the possibility that concern about the environment represents an issue that is not firmly rooted in the experience of the individual, but is

planted by the media.

In New Zealand, the proposal to dam the outlet of Lake Manapouri was the issue that brought environmental concerns to the public. Wilson [1982:10] states that "the battle over Lake Manapouri was the first time in New Zealand that an environmental issue aroused sufficient concern to divide the nation and...", more importantly, "monopolise the media". The proposal was to dam the Waiau River, just below the lake, thus raising its level by up to 26 metres, resulting in the destruction of the lake surrounds. When, in 1966, the proposal was altered so as to only raise the lake by eight metres thus only producing 4% more power than if the lake was not raised at all, opposition to the proposal accelerated. Many petitions were generated by the Save the Manapouri Campaign, with one, organised by the Royal Forest and Bird Protection Society, gaining 24,862 signatures and a later one, 260,000, again illustrating increasing public concern over environmental issues. The mass media, especially television, brought the debate to the population, increasing public awareness, whereas previous issues has not been brought to the attention of the whole country as was Manapouri. This debate also led to what was probably the first environmental demonstration in New Zealand, with a march by "Youth for Manapouri" in November 1972. The public now more aware of environmental issues, largely came from a preservationist viewpoint. They supported the protection of Manapouri because of the potential loss of natural landscape, not for its protection for future use.

The targets of the conservation movement have, over the last decade, been the protection of native forests and of wild and scenic rivers. These areas are in a void between obviously protectable areas and obviously developable areas, yet are seen as potentially belonging to both, as forests can be milled and wild and scenic rivers dammed.

However, the conservation movement views such areas as appropriate for protection.

Thus, the emphasis of the conservation movement, has moved back and forth along the conservation continuum since the nineteenth century. Utilitarianists were dominant in the conservation of forests in the 1870's, the emphasis then moving nearer to the other end of the continuum, with early national parks being designated not for solely preservationist reasons but primarily because there were no consumptive uses to which the land could be put. In the 1940's the movement began to broaden and the pyramid became more clearly defined with a more scientific intelligensia joining the movement, to provide expertise in aspects of conservation that were not preservationist, but were to the right of the centre, with utilitarian views having a greater influence. From the 1960's, the structure of the movement began to change, with a vast increase in public awareness of conservation issues, leading to a broadening of the base of the pyramid, with active, passive and inactive individuals. (See Fig 2.2). Conservation issues since this popularisation appear to have continued to move from the utilitarianist towards the preservationist view point (see Table 2.1) as the emphasis has moved from protection of areas for future use to concerns of environmental quality.

In recent years, the New Zealand conservation movement has become increasingly involved in political issues. Environmental issues play an important part in election campaigns and manifestos and a political party can win or lose many votes because of the support or lack of it for its environmental policies. Governments are recognising this and are giving high priority to environmental issues. This has resulted, in only the past three years, in the establishment of a Ministry for the Environment, Department of Conservation, and in 1989

proposals for environmental quangos, such as the Acclimatisation Societies to be abolished and all combined under a National Conservation Council. These all formulate, promote and develop environmental policies. Many of the duties of other more development-orientated departments, such as the Ministry of Works and Development, recently abolished, have been taken over by the environmental departments. In addition, in 1990, a complete reorganisation of environmental legislation is expected to be completed and an act passed to cover all existing resource management legislation.

It is obvious, from this discussion that the New Zealand conservation movement is by no means static. Since the late nineteenth century when it first developed, its composition has changed from primarily well-educated upper and middle class immigrants to, in the 1980's, a clearly defined movement with distinct groups within it, ranging from national public interest groups to "inactive" individual members of the public whose primary involvement in the conservation movement is at elections when their voting patterns can be affected by the environmental policies of the parties. Also, emphasis on the different views of conservation has changed also, encompassing the whole continuum from preservation - to utilitarian conservation. However, this discussion illustrates that not only does the movement change within, but the issues for which it fights and supports change also. It is a characteristic not only of the New Zealand conservation movement, but also those in other parts of the world. This is a concept that O'Riordan [1971:8] covered with particular reference to the American conservation movement, the development of which as was discussed earlier closely paralleled the development of the movement in New zealand. He suggested that the term "conservation" has been used to identify various periods of political activity either when public

policy was directed at better management of resources or when the political interests of certain resource-using groups were threatened. He stated that the history of the conservation movement in the United States illustrates this point, and this study will reveal that the conservation movement in New Zealand also fits this theory. He states that in the U.S. there has been the emergence of a number of conservation eras occurring over time, often co-inciding with public alarm over specific environmental crises. He states that the focus of conservation policy has shifted from the protection of the public domain (at the turn of the century) through regional multiple resource planning (until the 1940's) to national strategic safety (in the mid 1960's) and finally to environmental quality (in the early 1970's).

This argument is relevant, too, to New Zealand, where the concerns of the conservation movement or conservation eras have developed over time since the nineteenth century. These conservation eras are shown in Table 2.2. There are six significant ones. The early era (1870-1920) focussed on the protection of areas for public use, emphasis then moving to the prevention of environmental damage, such as floods and slips, and the protection of resources from exploitation to ensure their availability for future use (the peak period being from 1930 to about 1970). The later eras (from 1970 onwards) show concern moving toward environmental quality and particularly those parts of the environment that are neither obviously suitable for development or for preservation, yet could be adapted for both. Of particular concern are native forest and wild and scenic rivers.

As can be seen from Table 2.1, the conservation eras have been labelled with a "peak period", as eras in the New Zealand conservation movement do not have distinct boundaries between them as do the

Table 2.1 The Development of the Concerns of the New Zealand Conservation Movement

CURVE	PEAK PERIODS	CONCERNS	CAUSE	ACTION TAKEN	POSITION ON THE CONTINUUM
	1870s	Forests		1874 Forests Act, 1908 Forests Act	P ⊙—×———⊙ U
1	1870 - 1920	Protection of areas for public use, such as Reserve etc.	Gift of land for Tongariro National Park and realisation that much other land was useless for agriculture	Designation of 6 National Parks Scenery Preservation Acts, 1903,1908 1882 Native Reserves Act	P ⊙—×———⊙ U
	1920 - 1930	Forests Depression and post-war recovery - few major concerns		1923 Royal Forest & Bird Protection Society established	
2	1930 - 1945	Prevention of environmental damage (for example, by erosion and floods)	Slips and floods in Hawkes Bay in late 1930s	1941 Soil Conservation & Rivers Control Act 1934 Native Plants Protection Act	P ⊙———×—⊙ U
3	1945 - 1970	Protection of resources for future use (wise use).	Recognition of destruction of many resources due to lack of management Increased public awareness of conservation issues	1949 Forests Act 1953 Wildlife Act 1953 Geothermal Energy Act 1967 Water & Soil Conservation Act	P ⊙———×⊙ U
4	1970 - 1985	Environmental quality	Increased public awareness of conservation issues Manapouri debate.	1972 Clean Air Act 1979 Litter Act 1979 Toxic Substances Act 1979 Pesticides Act 1977 Reserves Act 1977 Q.E.II National Trust set up 1972 Commission for the Environment established 1970 Environment Council established 1983 Wild Animal Control Act	P ⊙—×———⊙ U
5	1980 ——	Environmental quality and areas of conflict between developers and conservationists, especially Native Forests and Wild & Scenic Rivers	Awareness of threats to such areas Clutha debate	1981 Wild and Scenic Rivers legislation World Heritage designation for Southland Forests	P ⊙—×———⊙ U

American eras, as depicted by O'Riordan. Rather, New zealand conservation concerns have a period where they reach priority within the conservation movement to be followed by many years where they may slowly lose prominence but never cease completely to be a concern. This can be illustrated by the designation of National Parks. The majority were designated at the turn of the century. However, other parks were still being designated in the 1980's. This concept can be depicted in the form of a "conservation era curve", as in Fig 2.3.

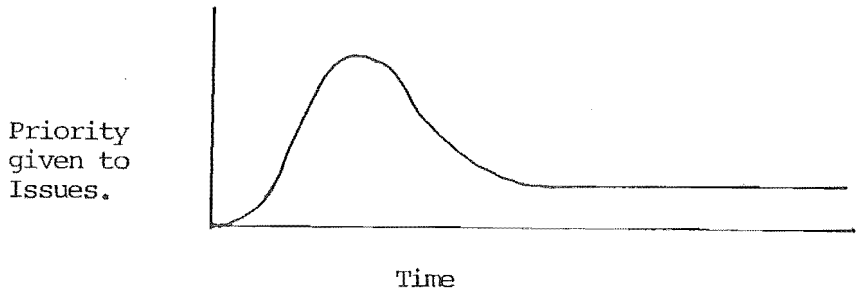


Fig 2.3 The Conservation Era Curve, representing the rise to dominance of a conservation issue

As Table 2.1 shows this model can be adapted to illustrate the development of the conservation movement in New Zealand, as a series of these curves with a distinct time scale attached (as in Fig 2.4). The curve depicted as rising to dominance in 1970 did not have time to decline before another era began to overtake it. The era showing concern with areas of conflict between developers and conservationists such as wild and scenic rivers rose without there being a decline in concern over environmental quality, and both will decline very

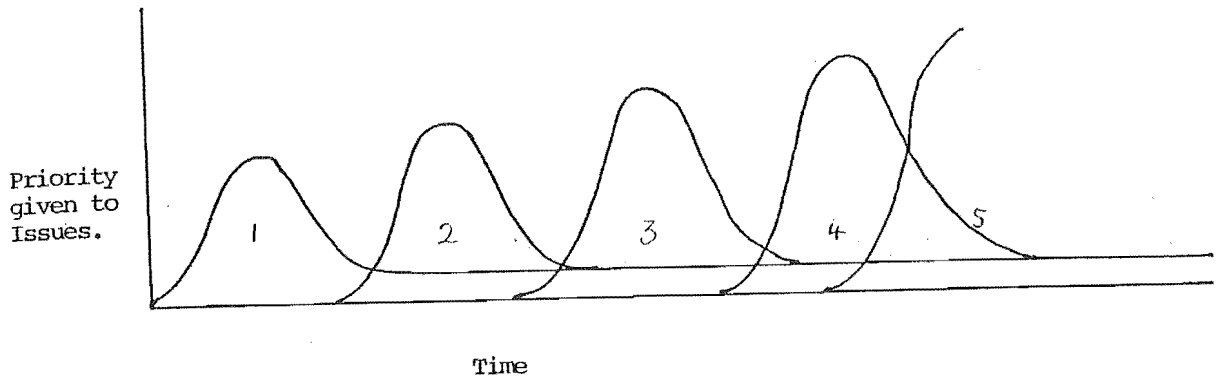


Fig 2.4 Conservation Eras in the New Zealand Conservation Movement

close together. It can be seen that one era rises before another completely declines, this being because one era often provides the momentum for the next. For example, the era beginning in 1930, concerned with preventing environmental damage, led to an increased awareness of the fact that many resources were being depleted at such a rate as to prevent any future use which in turn led to the arousal of the succeeding conservation era. The successive curves peak higher than the one before it as higher priority is given as the movement develops and one issue surpasses the previous one to dominate within it, and as more people become involved.

This then, is how and why the conservation movement developed from its origins as a preservationist based movement of middle and upper class well educated British settlers in the mid-late nineteenth century. What remains now to be examined is what part rivers played in this conservation movement.

(iii) Conserving the Rivers

Rivers appear only to have become a major conservation issue this century, and although the National Park movement began in the nineteenth century to protect natural areas and did include rivers, this was more by chance than by design. Concern for rivers was first aroused in the late 1930's and 1940's when soil erosion and flooding were major problems. The 1941 Act gave the Soil Conservation and Rivers Control Council the authority to "prevent flooding". This usually entails the building of stopbanks as well as increased soil conservation policies to lessen the amount of runoff in catchment areas.

This concern for rivers increased in the 1960's with the passing of the 1967 Water and soil Conservation Act which provided for the wise use of water resources for the benefit of future generations. This Act introduced the principle of multiple use, whereby several uses can be made of the same water, perhaps at the same time. If introduced the system of water rights, whereby the right of ownership of water is vested in the Crown, and anyone wanting to use that water had to apply to the Ministry of Works and Development for a water right. To "use" water included damming, redirecting, abstracting, dredging or adding waste to water. Thus until about ten years ago river conservation in New Zealand was largely from the utilitarian end of the conservation continuum.

However, rivers have frequently been contested areas: obvious for both development and preservation, and by the 1980's it was recognised that the threats to New Zealand's natural rivers were increasing and that some form of conservation involving preservationist ideals and the non-use of the resource was needed. Thus in the 1980's, rivers came to the front of conservation issues with the amendment to

the 1967 Act, providing for water conservation orders to be placed on rivers and lakes to restrict, limit or prohibit development on them, thus providing for the non-use of rivers, a preservationist view of conservation that appears to contradict the utilitarianist view of the principle Act. The Save the Rivers Campaign went as far to suggest that "whether officially promulgated or not, 1981 seems to have become 'the year of the river', in the chronology of the environment movement" [Rivers Report, Oct.1981:2].

The threats posed to such rivers are largely three-fold: hyrdro-electric power development, irrigation schemes and waste disposal, all of which lessen or destroy the natural qualities. The number of rivers under threat and whether or not this affects river conservation will be examined in the last chapter.

SUMMARY

Conservation is not a static concept, nor is the conservation movement a single clearly defined group in society. Conservation measures can range from perservationist, such as the wild and scenic rivers legislation, which involves the non-consumptive use of resources, allowing them to remain in their natural or existing state, to utilitarianist which involves the consumptive use of a resource, but a use which is rationally managed in such a way as to ensure its existence for use by future generations.

The conservation movement, too, cannot be clearly defined as a single group. There is a hierarchy of members of the movement, ranging from a narrow peak of nationally based environment pressure group to a broad support base of members of the public, both active and inactive in the movement, but all of which have vital roles. However, the

conservation movement has developed over time since the nineteenth century to take this form. It began as largely being made up of middle and upper class well educated colonists who saw the need to preserve areas of native bush, both as reserves and for future use. By the 1940's the movement had gained a broaden membership especially scientists and experts in particular fields. By the 1960's, it had gained a very wide popular base which has led to the characteristics of the movement today. Not only has the movement's membership developed over time, but so has its emphasis, from a largely preservationist base in the nineteenth century, to a more utilitarian based movement by the late 1960's, presently moving back towards preservationist emphases.

Rivers have become an important issue in the twentieth century, although have increased in importance only in the last decade as the conservation movement has recognised that the threats to rivers are causing more and more to be developed and as governments give more importance to environmental issues. This increased concern for the protection of rivers led to a wild and scenic policy to be proposed in the late 1970's.

CHAPTER THREE

THE GENESIS OF THE WILD AND SCENIC RIVERS POLICY

Prior to 1981, river conservation was based largely towards the utilitarianist end of the conservation spectrum, where to conserve a river was to conserve its use, ensuring that the resource was not over utilised and to ensure that some of it remained in a natural condition for use by future generations. There were no rivers that were protected because of outstanding wild, scenic, recreational and other natural characteristics. Even those in National Parks were not exempt from development. To be "conserved", a river had to be used, hence the regulation of water use by the issuing of water rights under the 1967 Act. Such rights could not be issued to recreational users or bodies that did not want to make consumptive use of the water at all, being issued only to those who could prove they had a legitimate consumptive use for the water. However, in the late 1970's proposals for a new river conservation policy were introduced, but before examining what was actually proposed, the context in which it was introduced must first be examined.

WHY THE 1970s?

Although the wild and scenic rivers legislation was introduced into parliament in 1981, the first discussion paper outlining a proposal was published in 1978. When it is considered what the other major policies were of the Government over these years, it does not seem appropriate that a conservation (especially based at the preservationist end of the spectrum) proposal be among them. At the

time the discussion paper was published, two of the Government's primary concerns were with developing New Zealand's waterways, not protecting them: one was the construction and operation of the Clyde dam; the other was getting the proposed National Development Bill passed through Parliament (which, as it turned out, occurred in 1979, two years before the Water and Soil Conservation Act was passed).

The National Development Act, the epitome of legislation designed for resource exploitation and large scale river development, (and the complete antithesis to the wild and scenic rivers proposal) was being drafted at this time, to enter Parliament later in 1978. This point is very significant in the development of the wild and scenic rivers legislation as it was felt by many people, including conservation and recreation groups such as the Acclimatisation Societies, and Members of Parliament, that river protection measures were only being developed at this time to appease such groups before the National Development Bill was passed. This feeling was strengthened when the wild and scenic rivers legislation was introduced into Parliament in 1981, when "Think Big" projects (a development strategy to utilise New Zealand's natural resources) were well underway. The National Development Bill was designed to "fast track" planning procedures for large development proposals, by greatly limiting the amount of public participation in the planning process and by making the role of the Planning Tribunal that of merely an advisory body. A development proposal could be passed through Parliament in less than six months. Power was very much concentrated in the hands of one person: the Minister of National Development. This was achieved as there were no effective rights of appeal, nor provision for judicial review especially as the Minister's final decision was made by an Order-in-Council. The findings of the Planning Tribunal are not

binding and the Minister is at liberty to totally disregard them, particularly if the work is considered to be of "national importance". Conditions set out by the Order-in-Council may be altered by another Order with no prior notice and no provision for hearings. There are very tight constraints on public participation, which usually makes it not worthwhile. The many hearings that exist under the present planning schedule are condensed into one single hearing with very little time to gather evidence, (about three weeks). The bill superceded the planning procedures of twenty eight other individual acts.

Thus the National Development Act greatly increased the power of the central Government both by downgrading the Planning Tribunal's role from a decision making one to an advisory capacity and by granting absolute discretion to the Minister of National Development to push through any project he/she wished merely by declaring to the Governor-General that it was of national importance, being subject only to political checks operating through the electoral system. This last aspect is crucial in relation to the introduction of the wild and scenic rivers legislation and the significance of the electoral system in the 1978 and 1981 elections will be discussed later. With no review of Ministers' decisions, the public had no immediate redress and as Bertram [1979:15] states whereas "most planning procedures are designed ... to protect individuals from the activities of the state and of other individuals ... the National Development Act appears designed to protect the state and the developer from aggrieved individuals". The public were placed at a great disadvantage under such a Act with little opportunity to voice their opinion and with there being no requirement that the public be notified when an application under the Act was to be lodged with the Minister for a project to gain national development

status. Thus the public could have been unaware that a project was under consideration until the Order-in-Council was issued. The Act rendered Courts and people powerless to stop or alter a project, which appears to have been a major direct intention of it [Ibid:16].

Thus, such an Act produced much opposition from the conservation movement as it was obvious that with the Government's development policy of "Think Big", the Act posed an enormous threat to the country's rivers, especially in the form of hydro-electric development. Not only was opposition voiced because of the threat that the act was perceived to pose to the natural environment due to the development it would allow, but also because the act allowed for only very limited rights of appeal and protest for any development proposal, and it is the existence of such rights in other legislation that has become very important to the conservation movement, the members of which spend much time researching and preparing evidence for hearings, often in opposition to proposals such as those which could now be fast tracked by the National Development Act.

The Government saw the opposition to the National Development Act and other proposals, in particular the development on the Clutha river (which by the late 1970's had water rights granted for it). Thus, something was needed to appease this opposition and this took the form of the wild and scenic rivers protection proposal. Such appeasement was very important as 1978 was an election year and the Government had to win the election to pass the National Development Act. It was realised that the Clutha issue had caused much opposition and that by now, as discussed in Chapter Two, the conservation movement had a very broad base of public support, support which was often influenced by the environmental policies of political parties at elections time. The National Government stated in its 1978 manifesto

that it intended to "identify and give appropriate protection to" New Zealand's wild and scenic rivers, in order to gain environmentalist's vote. However, there was more than solely the wild and scenic rivers legislation, in the way of environmental legislation, which would attract voters apposed to National Development. As, in the 1978 (and also later in the 1981) election, the Government was losing seats in metropolitan areas, measures had to be passed to retain these seats. This legislation included the 1977 Reserves Act, the 1980 National Parks Act, and Queen Elizabeth II National Trust Act 1977, all of which legislated for the protection of areas of land and/or water.

By 1981, the Government was again in such a situation. The National Development Act had been passed and as a result, Think Big projects were defined and being put into operation, with there being particular opposition to the construction of a dam on the Clutha river, to the south of Cromwell. Despite the 1978 election manifesto, no bill had been introduced for the protection of the country's wild and scenic rivers, and the government was again facing an election with much opposition from the conservation movement.

In the last session of Parliament before the 1981 election, a bill was introduced by the Minister of Works and Development for the protection of rivers with outstanding natural characteristics, but this was a different proposal than that outlined in the 1978 discussion paper. The bill was viewed as being far from perfect for achieving its goals of protecting wild and scenic rivers and that, more importantly, it was a "trade off" to conservationists against the Government's development policies. This view was frequently expressed in the Parliamentary debates during the passage of the legislation in 1981. The bill was not seen by many politicians as being the best way of achieving its object, particularly as the final decision as to whether

a river was granted protection was in the hands of one person: the Minister of Works and Development, a Minister associated with the National Development Act and one who would be unlikely to agree to the protection of a river that had high potential for development. It was presumed that the Minister of Works "measured success by kilowatts" and not wild and scenic rivers as he "had nothing to do with the environment, and dams rivers not saves them" [Hansard, 1981:4223]. The legislation was seen as merely a method to "tart up Government development policy and Think Big" [Ibid].

However, the majority of the debate was concerned with the fact that the proposal was only a trade off to the conservation movement. It was described as failing to please anybody and not going far enough in protecting wild and scenic rivers. The opposition suggested that if the Government was so concerned, wild and scenic rivers should have legislation of their own, or at least, be incorporated in legislation that had nothing to do with the Ministry of Works, such as the Reserves Act. The bill would not do what its objective stated it was intended to do: protect wild and scenic rivers, but it was suggested that it would do what it really was intended to do: attract votes. Conservation bodies, heard by the Select Committee to which the bill was referred, stated they would accept the proposal legislation as it was seen as better than nothing "but only just" [Ibid:4224]. The Save the Rivers Campaign, especially set up to fight for rivers as a result of Think Big, did not regard the legislation as adequate or effective. It merely set up a mechanism whereby certain official groups could try to gain protection for a river. It was described as a "waste of time, our time, your time" and merely as "words, words, words" [Ibid]. The Save the Rivers Campaign was one of the most prominent groups in expressing dissappointment in the Amendment, stating that it "has major

deficiencies and only a limited role to play in river protection" [S.R.C., The Rivers Report:Oct 1981:1] and backing up politicians in demanding that special legislation is needed, such as a Rivers Protection Act because "the nations chief dam builder" [Ibid:2] is too dominant in the process - "he should at least be working jointly with the Minister for the Environment". It was felt, as it stood the legislation still favoured developers and that this should be rectified. The National Executive of the Acclimatisation Societies represented another group less than satisfied with the bill. It stated that the Bill needed to be rewritten with a more appropriate philosophical base, however urged the passing of the bill, provided they were given the opportunity to try and improve it. The bill was referred to as "a con job" trying to prove that the Government was not entirely made up of "Think Big and high energy types", but there were a few who wanted to do the right thing by New Zealand's rivers. "The bill is complicated and represents the worst in departmental thinking, decisions made by politicians and not departments" [Ibid].

By the 23rd October the bill was law, but the opinion of many environmental groups and politicians was that as a first step towards a comprehensive policy to protect wild and scenic rivers, this act was good, but as a complete protection policy it was incomplete. Thus it appears that this legislation was introduced into a context of developmental policies with a primary purpose of appeasing voters and conservationists by being seen to be concerned for the environment, and as a trade off with such development proposals as the Clyde dam and the National Development Act. As Leather [1980:18] stated "the policy could achieve a great deal, then again it could amount to nothing". What exactly the policy has achieved so far will be examined in later chapters.

A WILD AND SCENIC RIVERS POLICY FOR NEW ZEALAND

The first indication that New Zealand might develop a policy whereby rivers could be protected in their natural state came at the beginning of 1977 when the Minister of Lands, Forests and the Environment, Mr Venn Young, announced his "belief in a waterways protection policy" (The Press: 16/3/77] that would provide a statutory identity for rivers that would be considered complimentary to the system of walkways presently being developed. The idea for such a system was, by March of that year, being explored by the Commission for the Environment in association with the Lands and Survey Department and the Ministry of Works and Development. As an example of what could be developed for New Zealand, the American wild and scenic rivers system, introduced in 1968, was being included in the study as any policy for this country "is likely to (be) similar to that now existing in the United States" [quoted in The Press: 16/3/77].

Concern was expressed that there had been no systematic attempt to identify rivers with outstanding scenic and recreational qualities in an objective way. The Assistant-General of Lands, P.H.C. Lucas, stated that "nothing is done (about these river qualities) until someone comes along with a development proposal and then the conservation lobby presents a proliferation of arguments as to why that particular river ... should not be altered or disturbed ... Such arguments seldom relate to the values and resources of the river system as a whole and certainly not in relation to values in the national sense" [Ibid]. If conservationists could study whole river systems, then it may be found that scenic qualities of a particular part of a river are minor, especially on a national scale. Lucas also suggested, as did Young, that the American system was particularly relevant to New

Zealand which had rivers of a similar if not better quality than many protected ones in the U.S.A. Both believed that a "scenic waterways system" would only hold a few of the best of the country's rivers as too many protected rivers would reduce the significance of those elite rivers. Exactly how rivers would be protected was not clear at this stage.

The first formal steps in the direction of policy making came in 1978. In January of that year, Young published "Wild and Scenic River Protection: A Discussion Paper" stating that "a waterways protection policy to retain certain rivers in their natural free-flowing state has been increasingly advocated in recent years" [Commission for the Environment, 1978:2]. The document suggests that at the same time that increasing numbers of people and groups were advocating wild and scenic river conservation, the threat of development of rivers for hydro-electricity was also increasing, as with the cost of the thermal generation of electricity increasing greatly, many hydro options previously thought uneconomic were now viable. The Ministry of Works estimated that a 150% increase in hydro-generation was possible over the twenty five years, 1977 to 2002. Several rivers were identified as having hydro potential which have subsequently been protected or will be protected by conservation orders, such as the Motu.

Four major types of river were identified "for which the public would be likely to seek protection under a wild rivers policy" [Ibid:4]:

(1) Rivers or parts of them that flow through unmodified or wilderness areas whose appeal is associated with the surrounding landscape. Protection is warranted because of "untamed nature" and "undeveloped" terrain.

(2) Rivers with significant recreational use which is dependent on their being maintained in a free-flowing form. This would include rivers used by canoeists, trampers, anglers and boaters. The appeal here is more closely associated with the river itself rather than the surrounding landscape, such as the Rakaia.

(3) Rivers notable for their outstanding scenic or visual qualities but which do not receive heavy recreational use or have a high wilderness value. Such rivers are used heavily for such activities as picnicing or swimming, an example being the Clutha.

(4) A river with a combination of the above qualities.

Such a range of rivers implies that a wide range of protection or preservation possibilities could be introduced to protect rivers and their immediate environment. It was felt that protection of the "natural qualities of the water and river flow" could be achieved by using existing water and soil legislation with river bank and catchment control being obtained through reserves and Town and Country Planning legislation. Such comprehensive river management would involve many Government departments, regional and local water boards, local authorities and power supply authorities all of which are concerned in the management of water and soil resources. Four different ways were identified by which the water and soil legislation could be adapted to protect wild and scenic rivers:

(1) The existing water classification system could be extended to keep water in particular classifications in a natural or existing condition.

(2) Minimum flows could be placed on particular rivers.

(3) The use of a water allocation plan could combine the above two methods, to allocate certain amounts of water amongst competing users. It could include water allocation for recreational and passive

(i.e. picnicing) users of the water resource.

(4) The water right process could be adapted so water rights could be issued for recreational or other instream users of the river.

All of these methods had their merits but none allowed for any actual designations as a protected waterway for recreational or scenic reasons, as in the American system, nor did any of these methods prohibit any impoundment or river works on a protected stretch of water, except perhaps for the water right process, which at present only comes into action after a developer has made an application to proceed. The discussion paper recognised that "there appears to be no way in which a water right could be granted to an applicant seeking to preserve a river in its natural state" [Ibid:7]. It became apparent that the best solution was for new legislation.

An essential element in the protection of wild and scenic rivers is the use of land adjacent to rivers. The discussion paper stated that any new legislation should incorporate methods for the control of that land in such a way as the then new Town and Country Planning Act did. If a prime objective was to retain the scenic quality along a stretch of river it is suggested that some form of zoning under a district planning scheme could be used such as a "landscape protection zone". This would be accompanied by a clear outline of permissable uses of the land, none of which would harm the wild and scenic qualities. As an alternative, if public access to the land was required, then the land could be designated a reserve. The Commission for the Environment saw control over the land as important and it is ironic that the final product, the wild and scenic rivers policy, exerted no control over the land although, as will be discussed later, it is possible but impracticable to protect land alongside a river by alternative legislation.

It was stated that to ensure effectiveness of a protection policy it was desirable that only one agency should be responsible for designating or initiating the designation of a wild and scenic river if a formal process of designation was to be adopted. This agency would co-ordinate the management and protection of a river and its environs, and when considering designation, it would be up to this body to consult all "interested and concerned parties" [Ibid:10]. The National Water and Soil Conservation Authority already had clearly defined responsibilites to adjudicate between competing users of water and as such was not seen as appropriate to encourage a conservation policy for rivers. A body whose responsibilities lay with conservation - utilitarianist policies was not seen as appropriate for encouraging a conservation-preservationist policy. However, the Q.E. II National Trust, already involved in conservation-preservationist policies was seen as highly appropriate.

This, then, what was outlined in the 1978 discussion paper:- "a wild and scenic rivers policy was needed, this need being illustrated by public concern over the increasing use of rivers for hydro-electricity, irrigation and other development schemes" [C.F.E., 1978b:3]; there were inadequacies in the present legislation to give required protection; and legislative backing was needed for a firm protection policy. The discussion paper may have shown what was ideally needed to protect wild and scenic rivers, but what was introduced to Parliament in 1981 was different and, in many ways, inadequate. If, as was earlier suggested, the wild and scenic rivers proposal was largely a trade off to conservationists, then such a policy as outlined in the discussion paper, if introduced, could have given too much power to conservationists for preventing developmental projects, and would therefore have not been welcomed by the

development-orientated Government of the early 1980's.

From the submissions received as a result of this discussion paper, the Commission of the Environment hoped to develop the framework for a protection policy for rivers and as the second step towards this goal an appraisal of the submissions was published in August of the same year. This publication outlined the concerns of those writing submissions, gave the Commission's conclusions ("that there is a need for a positive policy ensuring the protection of river or sections of them that have outstanding wild, scenic or other natural characteristics in their undeveloped state" [C.F.E., 1978b:i]), suggestions as to what were necessary requirements for such a policy and a possible course of actions to implement such a policy.

One hundred and ten submissions were received due to the discussion paper with the majority concerned with what would be protected by the policy and how. Examining from where in the conservation movement the submissions originated, 29.1% were from nationally based conservation and recreation user groups and Government departments, 23.6% from locally based groups and regional water boards, and 17.3% from individuals, although it should be recognised that some of these latter submissions may have been written opposing the proposal altogether and thus cannot be said to have originated from within the conservation movement. The remaining submissions came from development agencies (such as mining companies) and various other groups. 98.2% of the submissions expressed support for the principle of such a policy, but only approximately 54% supported the preservationist policy outlined in the discussion paper, the remainder supporting a more utilitarian orientated proposal with emphasis on multiple rather than non-use of the water resources. This illustrates that submissions originated from both extremes of the conservation spectrum. The two

submissions that opposed the proposal were the North Canterbury Acclimatisation Society and the North Canterbury Catchment Board and opposed it largely due to the threat of a loss of control. It was feared that rivers under their jurisdiction that would be protected would be removed from their management. The Acclimatisation Society felt that the NWCO would threaten the maintenance of salmon farms and stated that the proposal was only the result of the approval of a "recent works proposal" [C.F.E., 1978b:10] - probably the Clutha project, and that this was insufficient to base the establishment of a rivers protection policy. Of the 44.2% that supported the principle of a wild and scenic rivers policy, but sought it more utilitarian-orientated policy, some questioned not the need for a rivers protection policy but the need for a long term one, supporting the idea that the status of rivers be periodically reviewed. Concern was expressed that such a policy as outlined in the discussion paper would result in the "locking up" of many of New Zealand's rivers, which would benefit only a small part of the community. The Commission denied that this would be the result of any policy, which would encompass a variety of river environments which would be available for an "equally wide variety of recreational and other allied uses" [Ibid:5].

Other submissions felt that the proposed system was too narrowly focussed, given protection only to wild, scenic or recreational characteristics. Other values which might not fit into these categories are also often worth protecting. The two values frequently mentioned in submissions were wildlife values and scientific/educational requirements, as these, too, are important to a river environment. That the proposal should also be broadened to include "lakes, estuaries and other wetlands" was also mentioned, as none of these areas were covered by the disucssion paper. It was also

stated that any protection should not be restricted to rivers in a natural free-flowing condition, as many consumptive uses of water, such as small scale abstraction, are not incompatible with a rivers protection policy and even rivers with large dams can still have features worth protecting. Fears were expressed in many submissions that once a policy was introduced, only a few "token" rivers would be included and others would remain outside the policy, or that if some rivers were protected then this would automatically be taken to indicate by potential river users that all non-protected rivers were available for "unrestricted development" [Ibid:6]. The Commission stated that assurances were needed that the proposal was not for a closed policy, that the number of rivers that could be protected was limitless, but subject to certain standards, and that just because a river was not included in the policy, it did not automatically designate that river for development.

Submissions not only showed the public concern for what form the policy should take but also concern as to how it should be implemented. However, there was wide divergence over this point with five major options suggested as to how such a policy would be implemented:

(1) by the use of existing or amended soil and water legislation,

(2) by the use of existing or amended Town and Country Planning legislation,

(3) by the use of Reserves legislation,

(4) by the use of a combination of the above three acts,

(5) by the use of new and separate legislation.

The most popular proposal was that Soil and Water legislation would suffice (with some, especially water and catchment boards,

stating that sufficient acknowledgement was given to wild and scenic values in existing water and soil legislation, both the 1941 and 1967 Acts). Others felt that an amendment was necessary, outlining a process whereby passive river users and instream values would be taken into account and given protection whilst at the same time allowing for public participation and appeal. However it was felt by many, especially Government departments that there were already several different acts relating to the management of water and attempts should be made to consolidate rather than add to these.

That the Town and Country Planning Act could give protection was an alternative suggestion discussed in the submissions, with protection being offered, perhaps in conjunction with soil and water legislation, under regional or district schemes. This was considered particularly relevant as it was felt that there would be considerable difficulties with the maintenance of water quality, if there was no control over land use, especially in the catchment area, and along the river channel above and in the protected area. To assist in this, it was suggested that a national inventory of rivers eligible for inclusion in a wild and scenic rivers programme be developed, in order for regional and district councils to include the relevant rivers in their schemes.

Many submissions were in favour of totally new legislation, stating that it "would be the only way to give suitable status to a river protection policy" [Ibid:10]. A separate act would prove that it was the real intention of Parliament that the wild, scenic and recreational qualities of designated rivers warranted protection. A popular concept was that the policy could be in the form of an extension to the National Parks system.

As with the diversity shown over how the authors of submissions

felt the policy should be implemented, there was equally wide diversity in suggestions as to which body should have overall co-ordination and management responsibilities for a river protection policy. Suggestions varied considerably depending on the scope of activity envisaged:

(1) The Queen Elizabeth II National Trust was favoured by most submissions, although several were under the impression that the Trust was being specifically established for administering a wild and scenic rivers policy. Reservations were expressed by some recreation groups, as there were no representatives of recreational groups on the Board of the Trust.

(2) The National Water and Soil Conservation Authority (NWASCA) was seen as an appropriate body as it already administered water and soil policies.

(3) The National Parks Authority was suggested by those submissions who felt the policy could be implemented under an amendment to the National Parks Act.

(4) The Nature Conservation Council was suggested by submissions which were primarily concerned with the wild and scenic values of rivers.

(5) The Commission for the Environment was seen as the best choice by three submissions. However, in reply the Commission stated that "it could not take an administrative role in this or any other area as this would be incompatible with its independant functions" [Ibid:13].

(6) A new Wildlife Service was suggested as being established to move a river protection policy into the control of a Government agency free from any predilection towards commercial exploitation.

From an analysis of these submissions, the Commission for the Environment made an appraisal as to how a wild and scenic rivers policy

should be implemented and how it should operate. It was stated that there were several aspects involved in achieving such a policy that had to be taken into account in its development:

Recreational use and scenic characteristics are difficult, often impossible, to assess in a manner that permits ready comparison with economic uses, such as electricity production. This may place unquantifiable recreational values at a disadvantage, especially as there are not guidelines that would assist authorities in making a choice between protecting the natural values of a river or allowing it to be used for any economic purpose;

There is often a lack of accurate information about the extent and value of the recreational use of rivers for incorporation into water allocation plans or for the consideration of water right applications. This is because recreational use is diverse and often related to access, and wide ranging from active use such as canoeing to passive uses such a picnicing, which is often more related to the river environment than the actual water. Such uses are difficult to measure and a sound basis for planning would need information on such uses of rivers;

There is an underrepresentation of recreational interests on the decision making bodies concerned with the management of water resources, such as NWASCA. This would be essential in planning for a rivers protection policy so that the values important to recreationalists could be identified for protection. Some recreation user groups (such as canoeists) have representative groups, but passive users (such as picnicers) usually do not;

At that time recreational and instream users were unable to obain rights for the use of water and at water right hearings had to justify their existing use of the resource and prove that the right

would detrimentally affect that use. If a protection policy was to be successful, such recreational activities must be perceived as an actual use of water. The term "use" must be expanded to include more than just "consumptive use".

Thus, with these points in mind, the Commission for the Environment confirmed its support for a proposal and stated that for its successful implementation there must be:

(1) A base of co-ordinated information on the recreational and natural values of rivers and their environs;

(2) An agency to promote and manage any protection policy;

(3) A process of determining wild and scenic rivers to be included in the policy. Such a process must include the participation of all interested groups.

Thus, by the end of 1978, the initial proposals had been published, submissions called for and received, and several conclusions made by the Commission for the Environment as to how the policy should proceed. However, it would be another three years before such a policy would become law, three years of drafting and consulting with affected bodies. However, the Government appeared to be in no hurry to pass the legislation, especially in the form outlined in the discussion paper, which would result in very restrictive conservation orders, preventing any development proposals. In December 1978, a meeting of "top officials from many Government departments" [Christchurch Press 12/78] in Wellington revealed that there was support for a wild and scenic rivers system, even among departments who would normally benefit from the development of rivers, such as the Ministry of Energy. There was also agreement that no new body would be created to manage any protection policy.

It was almost two years later, that any more was mentioned of

the wild and scenic rivers proposal, although it had been announced that the 1967 Water and Soil Conservation Act would be amended in 1981 or 1982 and that any protection policy would be included in this amendment. In 1978, the Commission for the Environment had been seen to be concerned for New Zealand's rivers and had put forward a proposal for their protection. It was then felt safe to proceed with developmental actions, while apparently awaiting the results of a recreational rivers survey by the New Zealand Canoeing Association, which examined all of the major rivers in New Zealand describing and rating their recreational characteristics, which included wild and scenic attributes. With this survey to be completed in 1980, environmentalists wanting to know what progress had been made and an election looming in 1981, the issue of wild and scenic rivers again came to the fore. In 1980, the Recreational River Survey was published containing a draft wild and scenic rivers bill, a draft which had been completed for inclusion in the 1978 discussion paper, but which had been excluded at the request of the Ministry of Works who felt that if a draft bill was published in 1980, then it would severely limit the alterations that could be made to it at a later date. This bill was clearly based on the U.S. Wild and Scenic Rivers Act, and requested that six rivers, or parts of them (the Motu, Wanganui, Buller, Clarence, Rangitikei and Shotover Rivers) be protected under the proposed legislation which also listed 82 other rivers worth immediate investigation. Such a bill was apparently seen by the Minister of Works and Development as too powerful for conservationists: what was needed was an Act which would be seen to give protection to wild and scenic rivers, but which in reality had little ability to do so. However the survey conclusions did give several reasons why there was a need for legislation:

- it is too difficult to protect rivers merely by objecting to water rights as this would require constant surveillance;

- in water right hearings the burden of proof always falls on the objector, necessitating conservationists to attempt to give comparable, usually dollar, values for environmental values;

- there is already legislation for mountains, forests and the sea;

- hydro-electric power development is an increasing threat to wild and scenic rivers;

- the setting of minimum flows alone is inadequate;

- the 1967 Act was not intended for protecting wild and scenic rivers: its emphasis lies with utilitarian conservation and not preservationist views;

- protection can, if necessary, be removed; development is permanent.

By June 1981 the wild and scenic rivers proposal had been drafted into legislation and was introduced on the 1st September by the Minister of Works and Development. The bill was stated as having two major objectives: to ensure that rivers with outstanding wild, scenic and other natural or recreational characteristics were kept as far as possible in their natural state; and to ensure that it encompassed all forms of natural water, including water heated by geothermal energy, at present under a separate Act. After being sent to a Select Committee for re-drafting and much debate, which was discussed earlier, the Water and Soil Amendment Act (1981) was passed on the 23rd October that year, the last day of the last session of Parliament before the election.

The object of the act was stated as being "to recognise and sustain the amenity afforded by waters in their natural state" and to ensure " the preservation and protection of the wild, scenic and other

natural characteristics of rivers, streams and lakes". The fact that the amendment had an object clause of its own is, in itself, unusual as objects are usually part of individual acts, not amendments. This indicates that the object of the principle act (to manage the use of water resources, in such a way as to allow for future use) was not applicable to the amendment. This is indeed the case, the principle act concentrating on a utilitarianist view of conservation and the amendment to it focussing at the other end of the continuum, on preservationist conservation. The amendment is clearly definable in the principle act, as it creates Section 20, which outlines the procedure for protecting wild and scenic values. Exactly how this procedure works is examined in Chapter Four.

Thus by 1981 the wild and scenic characteristics of rivers in New Zealand could be protected by a conservation-preservation policy emphasising the non-use of the resources as opposed to the wise use and multiple use concepts of the principal act. However, the act passed in 1981, was not exactly the same as the proposal suggested in 1978, there being several distinct differences:

(1) No separate agency was created to supervise the protected rivers - applications were made to the Minister of Works and Development and heard before NWASCA.

(2) No protection is given to the whole river environment, including the land, only the water being protected by a conservation order.

(3) There is little co-ordination between NWASCA and the authority managing the land adjacent to rivers.

(4) The original policy was expanded to include lakes as well as rivers, but wetlands cannot be covered by a conservation order.

Despite such differences, conservation and recreation groups

were pleased with the legislation that recognised their activities as legitimate uses of water and which lessened the threats to the values they saw as important, although some, such as the Save the Rivers Campaign, did not feel the legislation went far enough in protecting wild and scenic rivers. Conservation groups in other countries had experienced similar situations, seeing many rivers dammed and few, if any, protected because of their natural or recreational values. The United States is an example where the increasing development of rivers for hydro-electricity saw an increase in demand for legislation to protect some of the remaining rivers in their present or natural state and where protection was actually given. Legislation was passed in 1968 and was shown in parliamentary debates and the 1978 discussion paper as being the policy upon which New Zealand's is modelled. However, as will be seen there are significant differences between the two countries policies. It is therefore important to study the 1968 American legislation to illustrate how suitable it was for New Zealand, what the major differences are and why the American system was not used in its original form in this country.

INTERNATIONAL COMPARISONS

New Zealand's wild and scenic rivers policy is similar to that of the United States, but there are some major differences between the two, which result in the American system being potentially more successful in protecting the wild and scenic characteristics of rivers and which again illustrates that the purpose of the introduction of New Zealand's system was more of an appeasement to environmentalists than a real display of concern for the state of the country's rivers. Thus this section will examine the United States policy, what it does, where

and how it was introduced and the major differences between it and the policy modelled from it; that of New Zealand.

Like New Zealand, the waters of the United States have been altered, used and changed for economic benefit ever since the early settlers arrived. By 1986, 50,000 large dams (25 feet or more) affect every major river outside Alaska except two: the Salmon and Yellowstone, 26,000 miles of waterway have been channelled for shipping, 58,000,000 acres of land are irrigated from rivers, 30,000,000 kw of electricity can be generated and 400 dams control the level of flooding in low lying areas. New proposals threaten other sites (there were 6000 applications for dam building permits on file in 1983, 456 of which were authorised when the Bureau of Reclamation, the nation's largest dam builder, got a 25% increase in subsidy). Existing dams and reservoirs are in need of repair or replacement as most dams were only to last 100 years [Palmer,1986]. Water is still being used recklessly. 81% of fresh water in the U.S. goes to irrigation and according to a General Accounting Office Report, 50% of that is wasted. By 1971, 200 billion 1958 dollars had been spent on getting water and power to cities.[Ibid]

Thus there was a large transformation of American rivers that went largely unnoticed as the dominant opinion was that unused rivers were wasted. However this was to change. Shortly after the turn of the century people began to question the need to build dams, especially as many were poorly built, resulting in several deaths. However there was no serious protest or opposition to any dam proposal until part of a National Park was threatened with flooding. The Tuolumne River in Yosemite National Park was to be flooded, in the process destroying the scenic Hetch Hetchy Valley, to provide water and power to San Francisco.

However, despite much opposition, the dam was authorised in 1913. Although the dam was built, this was the first time opposition to a dam took a major scale with official protests. It was only the beginning, although not a turning point. Uncontested dams were still being build in the 1950's and it would be 50 years after Hetch Hetchy before a consensus for river conservation would arise.

The 1960's and 1970's brought the ingredients for change, all of which led to a national movement to save rivers in the U.S.:

- a sense of scarcity, when people realised that thousands of rivers had been modified by dam construction and free-flowing rivers were scarce

- a "popular" conservation movement with the increasing awareness of environmental issues by the public throughout the western world, as outlined in Chapter Two

- activism by conservationists and landowners

- application of science and technology

- publicity, especially the press [Palmer,1986:93].

No one person had the idea of a national wild and scenic rivers policy. There were several people in different roles and all were crucial. The most important individual was the Secretary of the Interior, Stewart Udall, who after becoming Secretary did not have to concentrate solely on what was best for his own state (Arizona) and could concentrate on the nation as a whole. He recognised the need for protection of many rivers. In 1964 the first Wild and Scenic Rivers Bill was drafted and with some alteration was passed by the Senate. The Bill was finally released on September 6th 1968 and in the following week, the house voted in favour of it with a majority of 265 to 7. On the 2nd October President Johnston signed the National Wild and Scenic Rivers Act.

The initial act listed eight rivers (854 river miles) which were given immediate protection. These rivers were considered to be of national significance and were also a gesture to show that the act was to be taken seriously. The act states:

> It is hereby declared to be the policy of the United States that certain selected rivers of the Nation with their immediate environments possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations. The Congress declared that the established national policy of dams and other constructions at appropriate sections of the rivers of the United States needs to be complimented by a policy that would preserve other selected rivers or sections thereof in their free-flowing condition to protect the water quality of such rivers and to fulfil other vital national conservation purposes. [Palmer, 1986:147-8]

and as such prohibits dams and other federal projects that would damage the river. To be eligible for designation, a river must meet two criteria: it must be free-flowing in a natural condition "without impoundment, diversion, straightening, rip-rapping or other modification of the waterway" [1968 National Wild and Scenic rivers Act]. The existence of a dam (if low) or diversion works would not stop a river's inclusion in the system, hence a multi-category classification system. The second criteria is that a river must have one or more outstanding feature and it must be more than just free-flowing. Such features could include white water values, wildlife features and historic value.

There is a three-tiered classificiation system established by the 1968 Act, and a river can be classified under one (or combination) of the three:

(1) Wild River Areas: "These are rivers or sections of rivers that are free of impoundment and generally inaccessible except by trail with watershed and shorelines essentially primitive and water unpolluted. They represent vestiges of primitive America".

(2) Scenic River Areas: "These rivers or sections of rivers that are free of impoundment with shorelines or watersheds still largely primitive and shorelines largely undeveloped but accessible in places by roads".

(3) Recreational River Areas: "These rivers or sections of rivers that are readily accessible by road or railroad, that may have some development along their shorelines and that may have undergone some impoundment or diversion in the past" [Anon:15].

With such a system of designation, therefore, even rivers that are not necessarily flowing in their natural state can be included in the system, albeit under "recreational". This system allows for a wider selection of rivers to be protected than does the New Zealand policy which allows for dams on the concerned river, but not in the protected zone.

Not only does the American legislation allow for a three-tiered system of designation, but it also provides for the protection of the surrounding land which enhances the characteristics for which the waterway is protected. The Secretaries for the Interior and of Agriculture are entitled to purchase up to quarter of a mile of land on either side of the river, not to exceed 100 acres per mile total for both sides of the river. Lands owned by the State may be acquired only by donation and land owned by Indian tribes or a political subdivision of the state can only be purchased with the consent of the appropriate governing body. If the use of the land is compatible with the river designation, the landowner may retain ownership of it, but will need federal permission to alter the use of that land. The land owner is encouraged to manage the land in such a way as not to harm the river, as the purchasing of large tracts of land is expensive. Again this is an aspect of the policy that is absent from New Zealand's, where there

is no method for protecting shorelines, unless by totally separate legislation.

Thus by 1968, Americans had legislation to protect wild and scenic rivers, although the system was made almost powerless under President Reagan who cut the amount of funding set aside for land acquisition from $3,600,000 in 1981 to $1,600,000 in 1983. He also stated that if there was any opposition to a proposed designation, then that river was not suitable for protection. For example, one proposal of 505 miles of "recreational" designation was shortened to 245 miles because Reagan stated that an area of private land could not be included as it would arouse opposition. The system is still successfully in evidence today with 119 river segments (9260.2 river miles) protected [American Rivers, 1988:11].

This was the system examined by the Commission for the Environment when proposing a wild and scenic rivers policy for New Zealand and it is obvious that there are some basic differences between the policies of the two countries:

- in the U.S.A., eight rivers were protected under the initial act, none were in New Zealand

- in the U.S.A., there is a three-tiered system for classification of rivers, whereas in this country rivers are not classified at all - they have conservation orders placed on them stipulating what characteristics are protected and how

- in U.S.A., protection is given to river banks, it is not in New Zealand.

It is apparent from this discussion that the American system is potentially more effective in protecting wild and scenic rivers, and that New Zealand developed a very "watered down" version of it. If an exact replica of the American policy was adopted in New Zealand, it

would be a very powerful piece of legislation and this factor in itself could explain why such a policy was not introduced. Just as it is apparent that New Zealand's wild and scenic legislation is a trade off against the National Development Act, and the Think Big policies, so then was the American policy too powerful for that trade off. Not only would it have appeased conservationists, it would have given them more power in seeking wild and scenic river protection, especially if several rivers were lost to developers merely by passing the legislation. The best way for the Government to avoid debate over, for example, land acquisition, was not to make provision for it in the legislation. Thus the aspects that make the American system very successful (some would say over successful in that it has led to the recreational over use of rivers and the "Rand McNally Syndrome" [NWASCA:1982] which suggests that as attractions are identified, visitors increase, causing increased environmental damage), are absent from the New Zealand policy, and deliberately so. This, it is apparent, was the intention of the legislation when introduced - not to provide effective measures for the protection of wild and scenic rivers, but to provide the means to make a trade off with the conservation movement, to allow the Government to contrive with Think Big and the National Development Act while at the same time appeasing conservationists and attracting votes for two elections.

This then, is the context of the introduction of the wild and scenic rivers legislation and how it was introduced. What remains now to be done is to examine how the policy, once implemented, actually works in reality.

CHAPTER FOUR

THE WILD AND SCENIC RIVERS POLICY IN OPERATION

This chapter will examine how the wild and scenic rivers policy operates in reality. It will outline the process which must be undertaken in order to get protection for a river, who are the people and organisations involved, and what part they play in the process. Also examined will be exactly what a conservation order can protect, this aspect being elaborated upon in the following chapter with the study of two individual conservation orders, and how this protection is given. In relation to this, any characteristics of the policy or omissions in the legislation that could be altered to make it more successful in achieving its objective will be discussed, and how such alterations could be implemented. Since the policy was introduced in 1981, major changes to it have been proposed at different times. Those changes, and why it was thought they were needed, will also be examined.

THE CONSERVATION ORDER PROCEDURE

There are two types of conservation order: National Water Conservation Orders and Local Water Conservation Notices, both of which can contain two types of provision which can either preserve a river or lake in its natural or present state, or protect the natural features of a river or lake by placing restrictions on the issue of future water rights so that water levels, rates of flow or other aspects are maintained to protect instream values [MF.E.,1988:Pamphlet].

Much of the procedure for the granting of such orders is

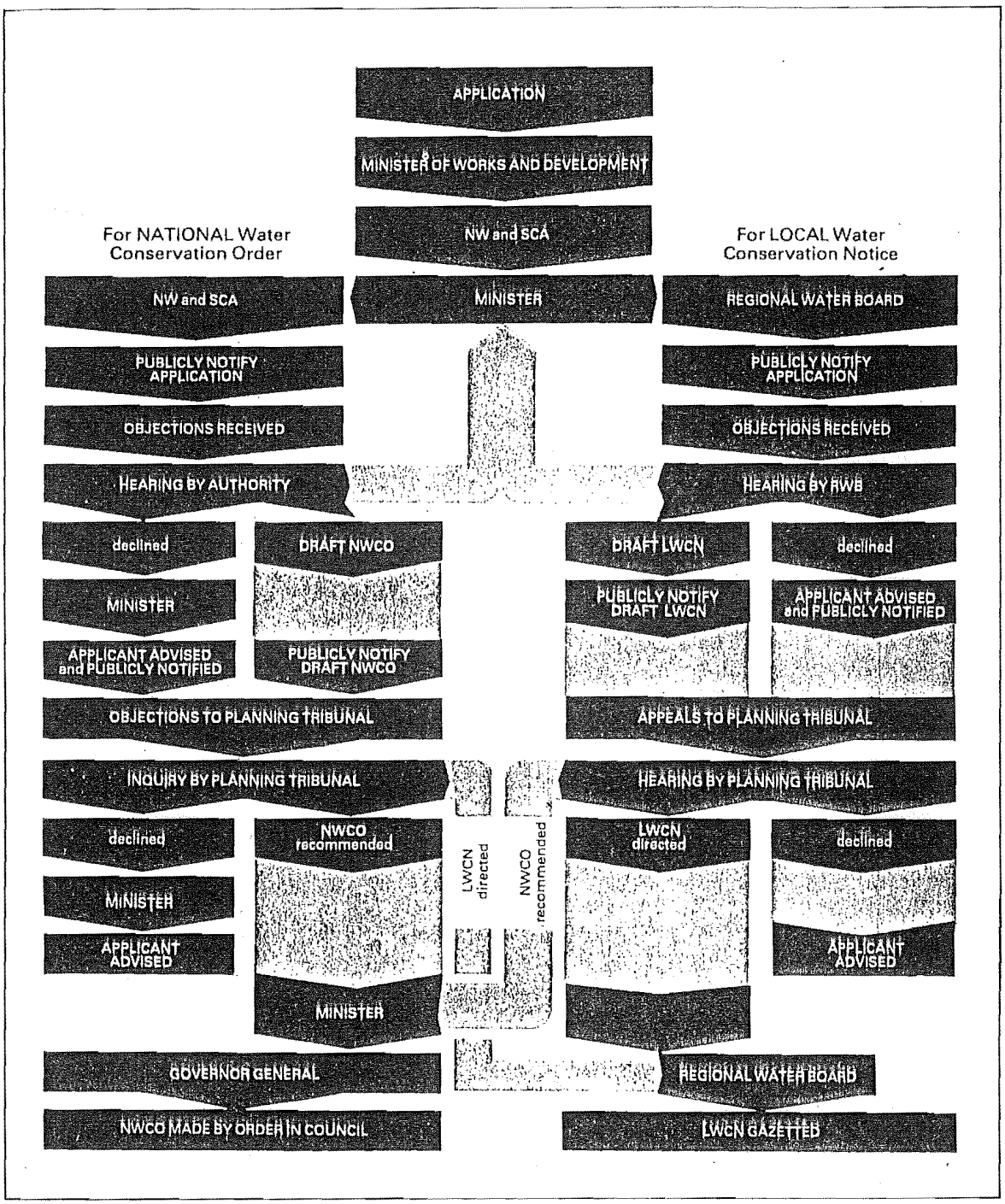


Fig 4.1 The Conservation Order Procedure (pre 1986)

N.B. Fig 1.1 shows a simplified form of the process (post 1986)

different for the local and national levels, but the initial stages of application are the same for both, (see Fig 4.1), the application being made for a "water conservation order", and the relevant Minister deciding whether or not it is processed as national or local. However, there are restrictions as to who can apply for conservation orders. According to the Act, only:

> Any public authority, local authority or any body specifically constituted by or under any Act, and any Minister of the Crown, which or who has any function, power or duty which relates to, or which is or could be affected by any aspect of water conservation or soil conservation may apply to the Minister for the making of a water conservation order in respect of any specified river, stream or lake or any specified part thereof. [N.Z. Statutes, 1981:1227]

As such, the act makes it very difficult for those bodies and individuals who have a genuine interest in the protection of wild and scenic rivers, such as local recreational user groups, to apply for conservation orders. The only way that this can be done is for these small bodies to lobby the eligible institutions to apply on their behalf. This would involve such bodies as the Acclimatisation Societies, the Q.E. II National Trust and the Department of Conservation. Members of the conservation movement from sections other than the upper sections cannot apply for conservation orders in their own right.

Until 1986 applications were made to the Minister of Works and Development, who forwarded them to the National Water and Soil Conservation Authority (NWASCA) which, after consultation with the relevant regional water board and "other bodies and persons it considers appropriate" [Ibid], advised the Minister whether or not the conservation order should be national or local. However, with the abolition of the Ministry of Works and Development and the creation of the Ministry for the Environment in 1986, this procedure was changed. Applications now go to the Minister for the Environment who no longer

forwards them the NWASCA but whose Ministry consults with the relevant regional water board and any other pertinent authorities, before deciding what type of order should be applied for.

After the Minister having made his decision, the procedures for the two types of conservation order separate, the local order being dealt with by the regional water board and the national order being dealt with by NWASCA (until 1986 and M.F.E. thereafter). These two procedures will be discussed separately.

If it is decided that a river warrants a National Water Conservation Order, then until 1986, the Minister of Works and Development would have passed it to NAWSCA who would give 28 days notice of a hearing to hear submissions and objections to a conservation order. Restrictions are placed on those who can make submissions but there is a much wider eligibility than for applicants. Those who can make submissions include:

- the applicant
- the Minister
- any regional water Board or regional or united council or local authority affected by the proposal
- any person affected or representing some relevant aspect of the public interest.

After 1986 this initial hearing was by a tribunal appointed by the Minister of Environment but the format remained unchanged. In considering the application for a NWCO, the Tribunal must take into account all forms of water based recreation, fisheries and wildlife, wild, scenic and other natural characteristics and also the need of primary and secondary industry. After such a hearing, the tribunal can do one of three things: it can prepare and notify a draft NWCO; recommend to the Minister that a LWCN be granted or recommend that the

application be denied altogether. However, within 28 days of it being announced that either a NWCO will be drafted or that it will be declined, the original applicant and anyone who made submission to the Tribunal hearing can take any objections about the recommendation to the Planning Tribunal which shall consider all submissions received and conduct a public inquiry at "such times and places as it may appoint" [N.Z. Statutes,1981:1229]. Such flexibility is because the Planning Tribunal is permitted to conduct two or more hearings together notwithstanding that they relate to different rivers, streams, lakes or different parts of a river. Once it has completed this enquiry, the Tribunal will either make a recommendation to the Minister on the application and the draft NWCO that it be granted, altered or both; or direct the appropriate regional water board to make a LWCN; or recommend to the Minister that the application be declined. Once this recommendation is made, any party dissatisfied with the decision as being erroneous in point of law can appeal to the High Court, but can only get the opinion of the Court on a point of law, and again if dissatisfied with this decision, the objector can appeal to the Court of Appeal. However, it is expected that the majority of NWCOs will be granted, or declined, after either of the initial two hearings. Once the final hearing is completed and the draft conservation order amended as necesssary, the Minister will advise the Governor-General to make the NWCO by Order-in-Council, against which there is no appeal.

This, then, is how a National Water Conservation Order is granted and as can be seen, there is much opportunity for appeal and participation in the procedure, mainly by those who would be affected by a conservation order, those most likely to make submissions. However, a water conservation order can protect the wild, scenic and other natural characteristics of a river in a number of ways as set out

in the Act, and exactly what the order will protect will be included in the draft. The Act set out four ways by which a NWCO can protect such characteristics:

- it can provide for the retention of the quantity, rate of flow or level of the water in its natural state

- it can prevent the building of a dam in a protected part of a river, by, for example, preventing the issuing of water rights

- it can prevent the construction of a dam anywhere else on a protected river, that would alter the river conditions in the protected zone

- it can set maximum and minimum level of water for a lake and minimum flows of water for a river.

Any of those eligible to apply for a conservation order can also apply to have it revoked, by the same process of hearing by which it was granted.

However, if the characteristics of a river are not deemed to be of national significance by the Ministry of Environment, a Local Water Conservation Notice (LWCN) is recommended. To have a LWCN granted a slightly different procedure is followed. After receipt of the application, the relevant regional water board calls for submissions and within 28 days can hold a public hearing or can appoint a tribunal to hear it and make recommendations back to the board. After such a hearing, the board will either prepare and publicise a draft LWCN; recommend to the Minister that the application be dealt with as a NWCO; or recommend that the application be declined. Again, within 28 days of the notice being drafted or declined, the applicant or any who gave submissions at the earlier hearing can appeal to the Planning Tribunal, which may, after its hearing, confirm, modify or cancel the draft conservation notice or confirm or overrule the board's decision to

decline the application. As soon as possible after the LWCN is drafted or modified by the Planning Tribunal, the water board must adopt it and it is published in the Gazette. A LWCN can do exactly the same as a NWCO except that it is not binding on the Crown, resulting in the fact that a Government department can authorise the development of a river, that is contrary to the nature of the LWCN yet cannot be stopped by it. LWCNs do bind local authorities and can also be revoked by the same process under which it was granted. Fig 4.1 shows the procedure before 1986 and excluding the High Court or Court of Appeal options. Thus, although different, the procedures for applying for and granting NWCOs and LWCNs have similarities, particularly in the actors involved. The system for granting water conservation orders favours certain parts of the conservation movement hierarchy. The initial process for their application favours the upper sectors of the movement, restricting it to any local or Government authority or any body constituted under any act of Parliament. This virtually prohibits those of the conservation movement, other than the top and smallest section (refer to Fig 2.2) from applying for a conservation order, and it is actors in these sections who are often most likely to want to apply. However, if the eligibility for applicants was increased and they could afford it (as will be discussed later, it is a very expensive procedure), then the process could become inundated by too many applications. This restriction of applications ensures, therefore, that only a few of the best quality rivers are introduced into the process while at the same time, ensuring that not too many rivers, that have great developmental potential, have the chance to be included.

However, although applicants may be resticted to the upper sections of the conservation movement, the process for objections and submissions allows for a far wider spectrum to participate in the

designation process, where anyone affected by the proposed designation can participate. Thus, even if one individual cannot apply for water conservation orders, he/she can at least make submissions and objections as to how they want the order implemented, and what form it should take.

The form of conservation illustated by such conservation orders is clearly at the preservationist end of the conservation continuum, controlling the flow and quality of water in such a way as to prohibit its consumptive use or limit it in such a way as not to make any difference to the natural characteristics of the river flow in the protected areas.

Thus, by the time the Act came into force on April 1st 1982, New Zealand had a policy whereby certain bodies could apply for water conservation orders, either local or national depending on how outstanding were the characteristics that would be protected, orders that would protect a river, stream, lake or part theeof as far as possible in its natural or present state. But is this the best policy for achieving these objectives?

THE BEST POLICY FOR NEW ZEALAND?

Once the Act was passed and conservationists saw exactly how the policy would achieve the protection of rivers in their natural state, it was realised that it was far from perfect for achieving its stated objectives. Williams [1984:8] stated that the "1981 amendment was an overdue legislative recognition that the 1967 Act was incapable of giving sufficient protection to recreational, scenic and other passive users of water" but that it was still not perfect; and in need of "refinment and reform". This was also the opinion of other bodies,

such as the Acclimatisation Societies, which stated that they were not happy with the act, but were glad it had been passed rather than delayed and which wanted to see it fine tuned. The Federated Mountain Clubs of New Zealand referred to the legislation as a farce [quoted in N.Z. Times 16/9/81] stating that the Act gives just as much explanation as to how to revoke conservation orders as it does on how to implement them. Conservationists disagreed with the Government over "whether this legislation does, in fact, afford protection to wild and scenic rivers" as is its intention. [The Press 3/2/82] and it was seen as an "unhappy compromise" [N.Z. Times 13/9/81] and, once it had been made public "it, predictably, pleased nobody" [Ibid]. Why was this the case? There appeared to be many areas of contention where it was felt that the legislation needed drastically reforming in order to make it more successfully achieve its objectives, and these will be outlined, and, where appropriate, with possible solutions.

One initial area of contention (removed in 1986) was the involvement of the Ministry of Works and Development in the process. Many of those concerned failed to see how the Government department responsible for the damming of rivers and for the National Development Act could effectively protect the very rivers it could dam. The Act was described by the Minister of Works as "a measure which the Government has consistently advocated as part of its policy of both protecting and enhancing our environmental resources" [quoted in The Press 5/9/81] whereas the opposition referred to it as being "like a rapist passing legislation to protect rape victims" and that it was merely "liberal lipstick to tart up the Government's Think Big strategy". With the wild and scenic rivers policy being controlled by the same department that controls governmental dam building policies, it was very unlikely that any river with great hydro-electricity

potential would be protected, and conservationists say this as a great disadvantage as many rivers warranted protection from the threat of hydro-development. In fact, in the first draft of the act a clause was included which gave the Minister of Works the power to veto any NWCO. However this was removed from later drafts. It was felt that an individual body should be established to process the application and to manage the rivers after the order has been granted, instead of this responsibility being passed to regional water boards as is now the situation. Williams [1984] suggested that what was needed was a particular organisation which is given statutory responsibility to monitor and manage the protected rivers, such as the National Parks and Reserves Authority.

However this issue was remedied in 1986 when the Ministry for the Environment was established and took over from the Ministry of Works in co-ordinating the wild and scenic rivers policy. The Ministry for the Environment promotes and co-ordinates policies which "achieve good environmental management" [M.F.E., 1989:3] and is neither an advocate for conservation nor for development.

One other issue that causes concern amongst conservationists and one that has not been remedied by the introduction of the Ministry for the Environment was illustrated earlier by the discussion of what is covered by a conservation order: solely the water. There is no form of control over the adjacent land and without such control "this new form of protection could come to nothing" [William, 1984]. The land adjacent to a river is often vital to the wild, scenic and often natural characteristics of the river. For example, trampers, picnicers often use a particular river because of its scenic qualities, qualities which often include the state of the river bank yet the act has no ability to protect this land as it protects the waterway. Distant

vistas (e.g. mountains) can also be an integral part of the wild and scenic characteristics of a river and there is no means of protecting these either. The Planning Tribunal recognised this omission in the legislation in its judgement on the Motu River Conservation Order, in stating that although adjacent scenic qualities are very important to the river environment and the qualities for which the river was being protected ("the combined qualities and natural characteristics of the Motu River in its natural state" [Williams, 1984]), protection of these must be gained under other acts, although there are few than can control private land (the 1941 Soil Conservation and River Control Act, being one, with the objective of controlling soil erosion and not protecting natural landscapes), and none can take land from private ownership without compensation.

Thus, there exists a policy that sets out to protect the wild and scenic characteristics of rivers, yet which fails to give any protection to a very important aspect of such characteristics: the adjacent land. However, this omission in the legislation can be remedied. Land and river environments have successfully been protected in New Zealand in local body management plans. Local authorities can include the protection of wild and scenic rivers as part of these plans. For example, the Waimarino County Council specified parts of the Wanganui River a Scenic Protection Zone, which includes the land adjacent to the river, where only a restricted range of uses is permitted to "preserve and enhance certain special qualities" [Guest,1987:11]. Although some of the land in this zone was, in the past, considered to be suitable for farming and exotic forestry, other values, such as the quality of the landscape, historic and scenic features and water and soil considerations are now regarded to be of more importance. This area was included in a National Park designated

in 1986. [Ibid]. What is needed to give effective protection to the whole river environment, both water and land, was an act to give total protection. As was discussed earlier, the United States wild and scenic rivers policy does do this giving the Secretaries for Agriculture and of the Interior the power to buy private land on either side of the protected part of a river in the form of a narrow quarter of a mile wide corridor of land. Such a policy, although very effective in protecting the scenic qualities of river banks, (there is no viable and effective way of protecting distant vistas unless in a National Park), is expensive and would only be implemented by a Government willing to spend money and serious in its intentions of protecting wild and scenic rivers and, as such, was not introduced in New Zealand.

However, there are two methods of protecting natural landscapes that do not require a change in legislation. The Queen Elizabeth II National Trust can protect areas of privately owned land by Open space Covenant (OSC). An OSC is a legal agreement between the Trust and the landowner to protect an area of "open space" from any clearing, development or "thoughtless landuse" [Q.E. II N.T, 1987]. Open space is understood to mean:

> Any landscape feature of aesthetic, cultural, recreational,scenic, social or scientific value, wetlands, streams, lakes, forest remnants, tussock land, archaeological and geological features, coastlines, caves and rural landscapes. [Ibid]

These covenants are placed on the land giving effective protection, usually in perpetuity and often allowing public access, but remaining in private ownership with there being no need to buy large tracts of land. Such a convenant could be placed on land alongside a protected river giving protection to the land with the conservation order covering the water. However, despite the fact that "open space" includes rivers and streams, an OSC cannot protect an entire river

environment on its own, because rivers are seldomly privately owned. The only difficulty in achieving protection of land by this method is that it needs the consent of the landowner, which would be unlikely to be given should a covenant threaten his/her uses of the land, although land uses are permitted that are compatible with the OSC. OSCs also usually cover only very small areas.

In addition, under Section 23 of the Conservation Act, land can be declared by the Minister to be a water course area, which must be managed in such a way as to protect its wild, scenic and other natural characteristics when consideration in relation to the associated river, stream or lake. However, such a declaration by the Minister requires the consent of both the landowner and the National Trust.

It, therefore appears that under the present legislation there are few practical ways that protection can be given to the land adjacent to rivers, and that if protection is to be given to these areas as part of a wild and scenic rivers policy, then new legislation will be needed to do it. Without such protection, as a method of conserving the scenic and natural qualities of New Zealand rivers, the wild and scenic rivers policy is inadequate. The policy is well suited for protecting the quality, quantity and rate of the flow of water in a river.

This non-protection of land is seen by the conservation movement as the major omission in the legislation as far as the actual powers of water conservation orders are concerned. However, there are perceived to be other deficiencies associated with the process for applying for and having granted water conservation orders. The process has been described by different writers (Williams,1984; Guest,1987; Federated Farmers; Acclimatisation Societies) as too long, too expensive and with too few eligible applicants. With such a labyrinth

of application procedures, (Williams said it was complicated even to a lawyer [1984:3]), the process is very lengthy. The Department of Conservation stated in 1988 that it believed that the shortest time in which a water conservation order could be granted would "be about six months", although none had taken such a short period. More realistically a period of approximately two years could be expected, this being the time it took for a conservation order to be granted for the Motu River. It took over five years for the Rakaia River to be covered by a conservation order, although, as will be seen from the following chapter, this appears to have been an exception rather than the rule. However, it has been suggested that the process should be made less time consuming and wieldly [Williams,1984:4], while at the same time not restricting or limiting the amount of public participation involved in the process. He made the suggestion that once the decision had been made as to whether the application will be national or local, it should be passed straight to the Planning Tribunal, without there being a special tribunal appointed. However, this would be impractical as it is not the duty of the Planning Tribunal to draft a conservation order. It has, however, been suggested that it is not the actual process that is too long but the gaps between the different parts of the process. Even allowing 28 days prior notice before a hearing there are still many months before that, when little is being done. For example, with the Rakaia conservation order, the application was lodged on the 10th June 1983, the NWASCA hearing was held early in 1984 and the Planning Tribunal hearing over one year later. It is thus not the hearings that should be omitted but the lengthy and unnecessary gaps between them. If these gaps were shortened, the process would also be shortened, without losing any efficiency or opportunities for public participation.

That this public participation is not allowed at the outset of the process has been another cause of disagreement. As was previously discussed application for NWCOs and LWCNs can only be made by statutory bodies and Ministers of the Crown, meaning that those local groups that are often more familiar with the values of the particular river than their nationally based counterparts are unable to apply, and , if they want river protection, must lobby one of the eligible groups to apply on their behalf. It is therefore possible that rivers believed by local bodies to be worth protection are not because applications are not made.

Related to this is the fact that the cost of applying for a conservation order and following it through the several hearings is very expensive and can thus dissuade a body from making an application. For example, it has cost the Acclimatisation Societies over $19,000.00 in costs for the conservation orders on the Grey River, and hearings are not yet completed. Such costs also severely restrict those who can apply for a conservation order which in turn limits the number of rivers for which such orders are granted.

Thus, the wild and scenic rivers legislation appears to have a number of omissions that can make it inadequate for achieving its objectives: there is no way of protecting land; the number of applicants is greatly restricted; the process takes a lot of time and is very expensive and is a process that until recently was controlled by the Minister of Works and Development. Such omissions support the discussion expounded in Chapter Three that the wild and scenic rivers policy was introduced as a trade off to the conservation movement against Think Big and the National Development Act, and as such the policy has been criticised because of what it does do, rather than what it does not, especially by consumptive users of water and regional

water authorities. The policy can restrict and prohibit the granting of water rights, thus restricting development such as irrigation schemes. A policy that can prevent the irrigation of farmland is unlikely to be popular among farmers and industrial users of water, although the act states that primary and secondary industry had to be taken into account in the granting of water conservation orders. Regional water boards see the policy as a threat to their control of rivers and as an "unnecessary control imposed by central Government" [Guest,1987] which prevents local bodies from having full control over their own resources. Local water boards do manage rivers protected by water conservation orders (WCOs) but in the case of NWCOs only under the regulation set out by the order by central Government. In the process of designation, the relevant water board is consulted as to whether it feels it should be processed as a national or local scale. Often the recommendation is local so that water board can control the management techniques. If this is not overruled, the rivers that are eligible for a NWCO are not protected under one. To be effective, any national policy for the protection of wild and scenic rivers must be supported on a local scale with mechanisms such as Regional and District Schemes. Few Regional Authorities have given such support. Less than half the rivers in the National Inventory of wild and scenic rivers, published in 1984 had been identified (by 1987) in Regional Schemes as being resources of special value and few had a firm policy as to how such rivers should be managed. Only three schemes outlined policies as to how particular rivers were to be managed. Under LWCN, the regional catchment/water board designs the conservation order and the ways under which it will be managed. Guest suggests [1987] that they are not ready for such responsibilities, and that they need more commitment and must show they have environmental awareness in their

management policies. Responsibility comes with commitment to conservation policies, something which many regional water boards lack.

With such dissatisfaction with the wild and scenic rivers policy, it was obvious that amendments to it would have to be made in order to overcome the ommissions outlined above. Such amendments have been proposed, in 1985 and with the Resource Management Law Reform currently underway, and these will be outlined here.

1985 - A NEW POLICY?

With a change of Government to Labour in 1984, there also came the possibility of changes to the wild and scenic rivers legislation. The Government's election manifesto stated that the 1981 legislation would be repealed and Labour would legislate separately for a listed schedule of wild and scenic rivers. Any conservation order already granted under the existing legislation would be confirmed. This was one of the few policy changes that were announced before the calling of the snap election. With the National Government out of office, the new Government could introduce a policy which did not have as its primary objective of attracting votes and appeasing the conservation movement, although by announcing the policy change conservationist voters would have been attracted to the party. Labour seemed "determined to improve the situation for river groups [Save the Rivers Newsletter, December 1984:1]. However, it was clear that the Government's "plan of attack" had already been decided upon [Ibid]. At a meeting held in 1984 by the Under-Secretary for the Environment, Philip Woolaston, who was spearheading the new policy, it became clear that Labour wanted to continue to give rivers protection under the procedures laid down in the 1981 legislation, rather than with some special purpose legislation

as favoured by conservation groups. The Save the Rivers Campaign recognised government thinking as having three main emphases:

(1) To overcome the current problem of expensive and time consuming applications to gain protection for rivers, a schedule of protected rivers would be named in 1985 and appended to a revised act. This schedule would be made up from the National Inventory of Wild and Scenic Rivers.

(2) The existing procedures for NWCOs would be streamlined to widen eligibility of groups making applications, to reduce costs, and to abbreviate current legal procedures.

(3) LWCNs would disappear and would be replaced by a water management planning process which would be carried out by catchment authorities [Ibid].

Such a proposal recognised many of the omissions in the existing legislation and attempted to remedy them. However, Save the Rivers stated that from a meeting with politicians, it was believed that such a wide ranging policy would be unlikely to be accepted by Government. Nevertheless, a revised water and soil act was expected the following year.

In 1985, it was stated that pressure on the legislative programme had caused the postponement of the introduction of a new bill until 1986. In a statement issued in March 1985, the Minister of Works, Mr Colman, stated that the Government was determined to introduce more effective rivers protection legislation and that new legislation, an important feature of which would be immediate protection for a schedule of protected rivers, would be introduced. This is similar to the United States policy that protected eight rivers in the initial wild and scenic rivers act. The protection of such rivers, in New Zealand, would take the same form as that given by a

NWCO except that protection is not tailored to suit any one particular water body. A hearing process would be designed for adding rivers to the schedule and for applying for any particular restrictions on one individual river.

A very important aspect of the schedule is that it states for "some of the most important wild and scenic rivers" [Ibid] protection of the natural qualities of the adjoining landscape is as important as protection of the river itself and as such, provision would be made to give special reserve status to these river catchments and corridors. This would need either new legislation or an amendment to the Reserves Act. The National Inventory would be used as a starting point for deciding which rivers will fit into a schedule.

By mid 1985 an amendment to the 1967 Water and Soil Conservation Act had been drafted and was "circulating within Government departments", its main features being those outlined by the Minister:

* Rivers in the schedule or which lie in National Parks, or wild and scenic reserves will be protected from:

- all damming

- abstraction and discharge of water resulting in alteration of more than 10% of the natural flow

- any reduction in water quality

* Applications can be made for WCNs (not national or local) in order to protect rivers in greater detail or for rivers not on the schedule. Rivers cannot be added to the schedule.

* Applications can also be made by developers wanting a river removed from the schedule.

* All applications will be heard by NWASCA with a right of appeal to the Planning Tribunal. Any "body or person representing some

aspect of the public interest" can apply.

* WCOs confirmed by NWASCA are no longer referred to the Ministry of Works and Development for approval but automatically are implemented by regulation. This is the same for revocation of such orders.

* All local bodies must take into account restrictions on rivers in planning procedures.

* Catchment authorities will have to publish water and soil management plans to outline, among other things, policies for managing waterways.

The draft bill appeared a vast improvement on the original legislation, remedying nearly all the omissions of that first act, particularly if the schedule adopted was a general one (59 rivers were listed in the Inventory). Such immediate protection of New Zealand's best waterways would also place the "burden of proof" upon the developer or water right applicant, who would have to apply to have rivers removed from the schedule. However, there was still no mention of a clearly designated body to administer and co-ordinate wild and scenic rivers protection.

Thus, if such a policy was to be introduced, it would give the opportunity for much more effective wild and scenic river conservation. The lengthy process of designation would be shortened; effective protection would be given to both water and the adjacent land, conservation orders would still be issued for rivers additional to those in the schedule and the eligibility to apply for these would be broadened.

However, such a schedule has yet to be introduced. In 1986 the Government established a Protected Waters Assessment Committee to advise on which rivers and lakes merited possible inclusion on the

schedule, and by late 1986, the government was considering the proposal for introduction into Parliament. According to the MFE [Personal Communication, 1989] by this time it was clear that many of the country's resource management statutes needed reform and that to add piecemeal to the existing water and soil legislation would be unsatisfactory. The Government therefore decided to refer this proposal for consideration as part of the Resource Management Law Reform. Thus, a draft of the Water and Soil Conservation Amendment was not introduced but many of its provisions will be incorporated into the new Resource Management Planning Act. A decision as to whether or not the schedule will be included has yet to be made, but indications are, at this stage, that it will not. The Minsitry has also stated [Ibid] that the scope of NWCOs will be widened and "it is likely that the protection offered by a national order could be complimented by protection of river banks and adjacent land". Such details are still to be clarified. However, from discussion papers already published on the RMLR, it appears that very few changes are to be made to the wild and scenic rivers policy. This will be covered in Chapter Six.

SUMMARY

New Zealand has, by 1981, a policy which had the primary objective of protecting the nation's rivers with outstanding wild, scenic and other natural characteristics. Protection is implemented through National Water Conservation Orders (if the river values are considered to be of national significance) and Local Water Conservation Notices (if only of local significance). These orders can put a number of restrictions or limits on the development of protected rivers, but only after a lengthy and expensive process of hearings. However the

policy was not entirely suitable for achieving in goals, and, as outlined in this Chapter, there are a number of omissions in the legislation. There are, however, ways by which these can be remedied, and these were combined into a new policy, proposed by a new Government in 1985 which introduced the proposal of a schedule or list of protected rivers, each given the protection equivalent to that given by a NWCO. However this was not introduced as a new act and may be incorporated into the RMLR. Therefore, the omissions and deficiencies in the legislation remain and some of these will be examined in the context of two rivers, the Motu and the Rakaia, in the following chapter, which will also study the process undergone for each river to get protection and the extent and effects of such protection.

CHAPTER FIVE

THE MOTU AND RAKAIA RIVERS:

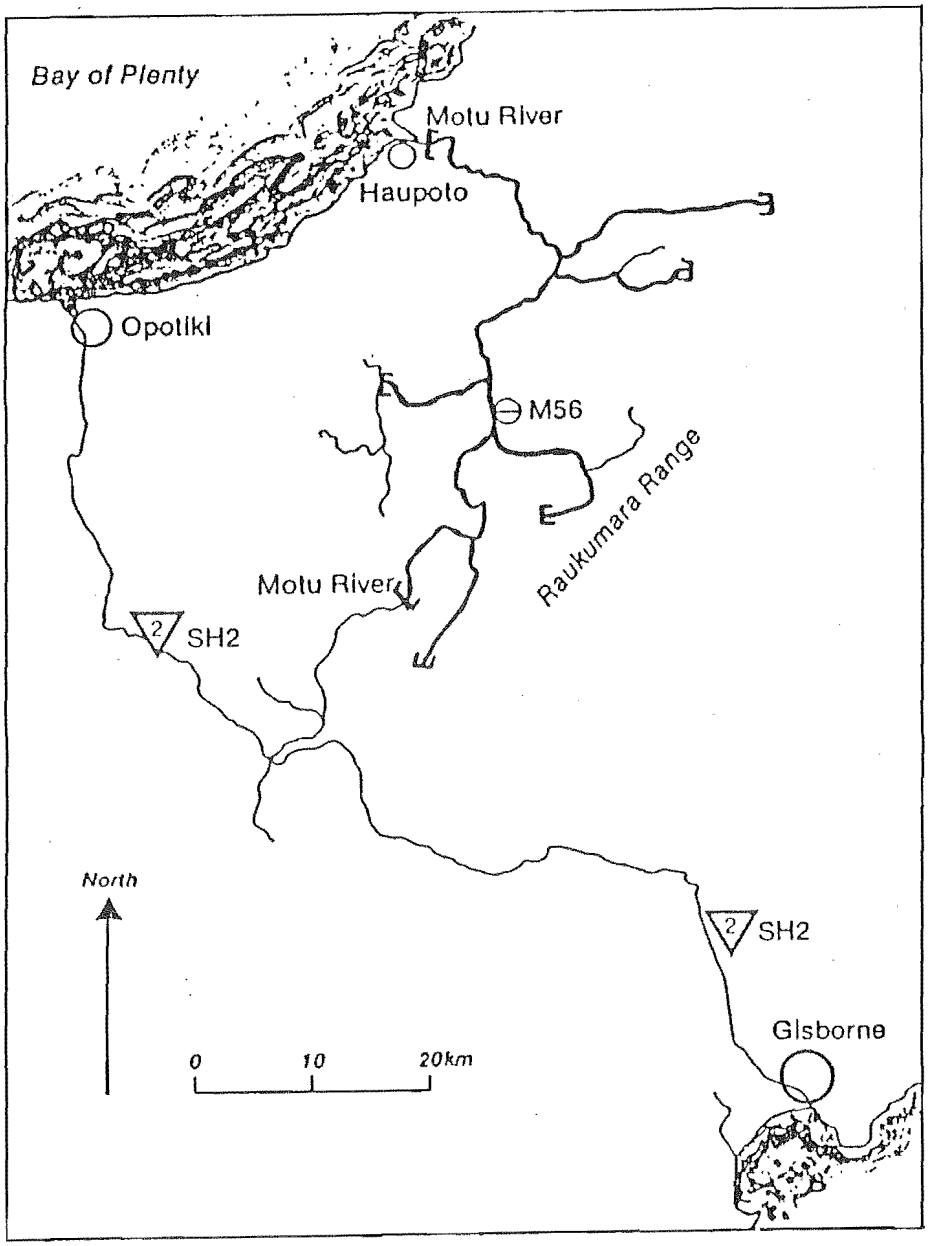
SETTING THE PRECEDENTS OR ILLUSTRATING THE DEFICIENCIES?

The aim of this chapter is to illustrate the points made in previous chapters as to how the wild and scenic rivers policy operates and how the omissions in the legislation relate to particular rivers. It will also examine the effects of a conservation order, once implemented, on the river environment and on river users, especially those making consumptive use of water. Two particular rivers will be examined: the Motu on the East Cape of the North Island, the first to have a conservation order placed on it, and flowing largely through a State Forest Park, and the Rakaia River in Canterbury, which has great irrigation and hydro-electricity potential and for which elaborate schemes for these have been planned. For each river, the process undergone to achieve protection will be examined as will the reasons why protection was deemed necessary, what form that protection has taken, and what effect that protection has had on the various river users.

THE MOTU RIVER

"The Motu is a wild river by any New Zealand standard" [Molloy, 1980:1]. It rises in the Raukumara Ranges in East Cape and flows 150km through extremely steep forested country to the eastern Bay of Plenty (Fig 5.1). The river falls naturally into eight separate reaches, each with a distinct character [Mosley,1986]:

(1) M147-M97 (ie 147km from the river mouth to 97kms), the



Protected segment in dark print

[= Border of National Water Conservation Order.

Fig 5.1 The Motu River
Source: [DOC, unpublished data]

river meanders across wide terraces of the flood plain, pastoral in nature.

(2) M97-M74.5. The river flows in a narrow tree lined trench, only 15 metres wide, shallow and slow flowing. The adjacent land is pastoral and native forest.

(3) M74.5-M57. The river is narrower, flows faster and is more turbulent, interspaced with deep pools between rock cliffs and dense native bush.

(4) M57-M48.5. Here the river widens at the location where investigations were undertaken for potential dam sites, with small rapids, interspaced with deeper slow moving stretches. Surrounding hills are less steep.

(5) M48.5-M47 is a series of slow deep pools and small rapids surrounded by cliffs.

(6) M47-M38.5 is similar to the previous section but with wider open valleys.

(7) M38.5-M33.5. Here the channel steepens and winds between rock banks and gravel.

(8) M33.5-M0. The valley opens out with easy rapids and pools with a vegetationless delta over the last five kilometres.

Such an impressive river, particularly one with much of the adjacent land still in a natural and unmodified condition, was considered to be worth protection under a National Water Conservation Order. Once the wild and scenic rivers legislation was in place, the Commission for the Environment considered that it must be tested as soon as possible in order that the "relevant criteria and procedures for a successful application could be established" [Williams, 1984:3]. In January 1982, before the legislation actually took effect in April of that year, the Commission convened a meeting of interested

departments and organisations to discuss a test case. At this time, the Environmental Defence Society (EDS) in Auckland approached the Queen Elizabeth II National Trust to suggest that the Trust might be an appropriate applicant for the conservation order for the Motu River. The National Trust, unlike the EDS and often private interest groups, had been given by the legislation appropriate status to bring such an application.

The application was lodged on 30th April 1982. Under the legislation there was seen as being two approaches. One was to seek a blanket preservation order, the other being to request that specific features or characterists of the river be protected. The National Trust adopted the first approach arguing that the "combined qualities and natural characteristics of the Motu warranted an order retaining the river in its natural state". Thus, a NWCO preventing all development was sought for the Motu River from the Motu Falls to the sea (see Fig 5.1). The application was heard before a committee of NWASCA over three days in December 1982. In its decision, the following February, the committee stressed the outstanding characteristics of the centre portion of the river, and comparing those values with those of the upper and lower reaches, concluded that only the middle portion merited protection. The decision was appealed to the Planning Tribunal, in a five day hearing in October 1983. The Trust argued that NWASCA had misinterpreted the legislation and as a result had excluded the upper and lower reaches of the Motu, which in fact, did deserve protection. The Planning Tribunal upheld the arguments and recommended to the Minister of Works and Development that a NWCO be made in respect of the whole part of the river applied for from the Falls to the State Highway bridge on the coast. This was accepted and the Order-in-Council gazetted on 7th February 1984, almost

two years after the original application.

The river as referred to in the order includes the main river stream as outlined above together with the Waitangirua Stream (flowing into the Motu at M78), the Mangaotane Stream (at M59), the Te Kahika Stream (M30) and the Mangatutara Stream as well as that part of the Tukapatahi River (M50) below its confluence with the Whitikau Stream. (See Fig 5.1).

The order prevents the right to dam any part of the protected sections of the river and should a dam be granted for part of the river not covered by the order, it must be issued in such a way or subject to such restrictions as will result in the dam not affecting the protected portion of the river. Water rights shall not be granted for the protected part of the river other than for the maintenance of the highway bridge and any matters undertaken under the 1941 Soil Conservation and Rivers Control Act. Nothing in the order shall restrict the use of the water for domestic needs, for the needs of animals or for fire fighting purposes. The Ministry of Works and Development also wanted water rights granted for hydro-electricity investigations, but these were rejected. At the time, the NWCO was granted, only three water rights were in existence and all were on the upper reaches, not covered by the order. None abstracted enough water to affect the flow downstream.

Thus, the first NWCO granted under the new legislation, and a test of that legislation, on the Motu River, took the form of an order that rather than protecting particular aspects of the river, preserved as far as possible in its natural state a large portion of the river. The building of dams was prohibited and the issuing of water rights severely restricted on the protected part of the river. As was outlined in previous chapters, the process was long, in this case

taking almost two years (not the possible six months as subsequently outlined by the Department of Conservation) and the applicants were restricted, with the EDS having to ask the Queen Elizabeth II National Trust to apply on their behalf, as they were not eligible to do so.

In addition to the process taking two years to be finalised, the Motu River conservation order illustrates another of legislation's omissions, as outlined in the previous chapter: the order restricts development on the water but cannot place similar restrictions on the adjacent land. Being largely bush-clad, the banks of the Motu greatly enhance the wild and scenic nature of the river. The Planning Tribunal recognised the land as being an important factor, but stated it would require a more powerful statute before the Authority or Tribunal could impose an order which could, in effect, "freeze" land which is in public or private ownership. There are few such acts and none which deprives a landowner of his rights of ownership without any form of compensation. There is also a "practical and virtually insurmountable difficulty" in achieving the objective of scenic protection, because of distance. Distant vistas, such as mountains, are often an important aspect of such scenic qualities. Nevertheless, although adjacent land cannot be protected by the conservation order, the characteristics of it was taken into account when the Tribunal made its decision.

However, as far as land protection is concerned, unlike many New Zealand rivers, most of the land surrounding the Motu is already zoned in such a way as to limit development. As can be seen from Fig 5.2, outlining the status of the land alongside the river, some of the river corridor is under "reserve" or similar status. This is not due to any statutory recognition of the natural characteristics of the land that must be protected in association with the status of the river, but because of the topography of the area. Much of it is too rugged to be

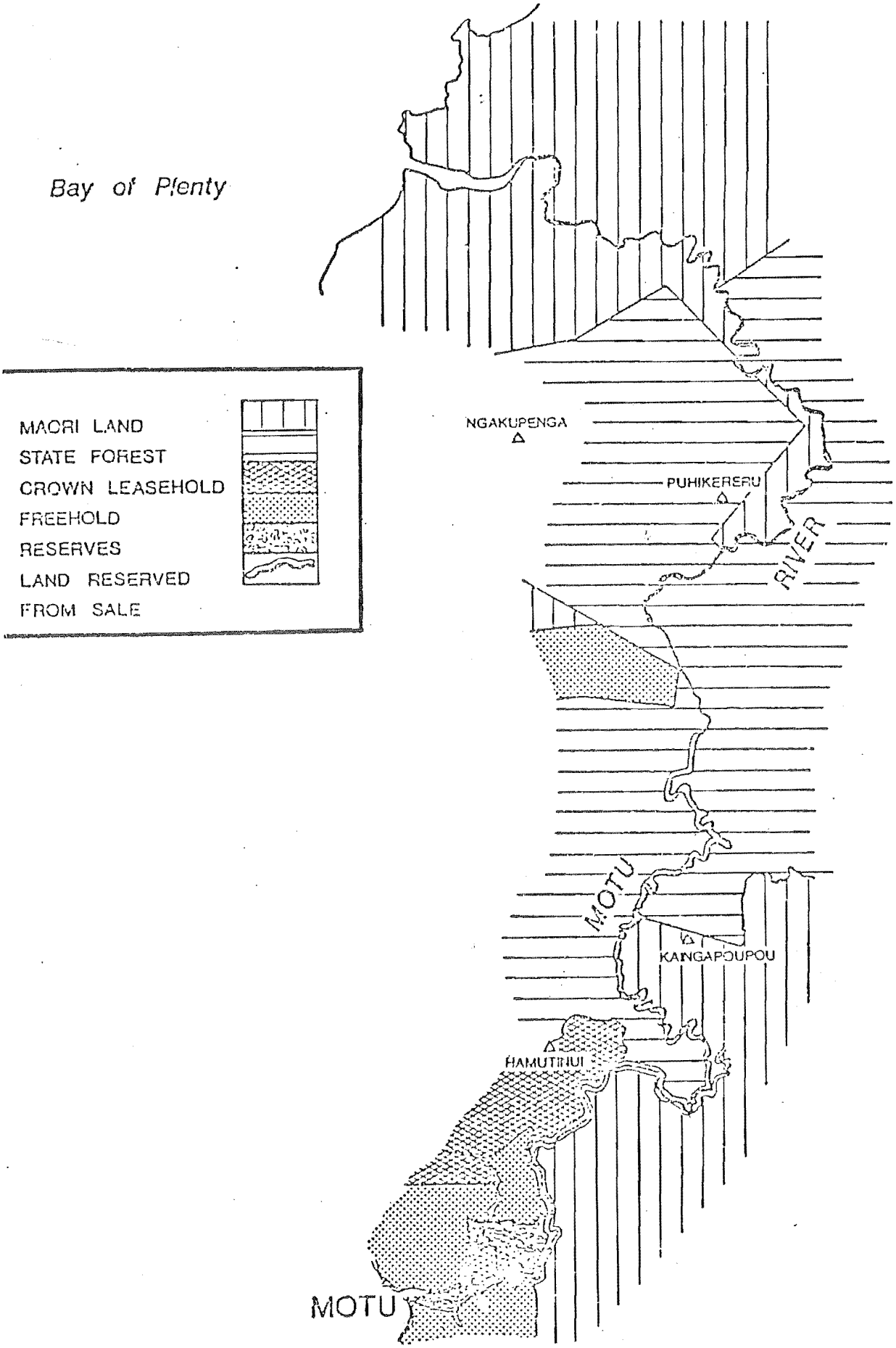


Fig 5.2 Land Surrounding the Motu River
Source: DOC, Gisborne

put to any productive use, with even the forests in the area unable to be milled because of great access difficulties and the relatively poor quality of the timber. The only major area where the banks are farmed in its the upper reaches, above the area protected the the NWCO and the order has to date restricted no farming practices in the area. Most of the river corridor is surrounded by State Forest (about 45%) and Maori Land (about 35%). The remainder includes two Steepland Protection Zones where development, particularly timber felling, is prohibited because of the risk of soil erosion, a "Remote Experience" Zone where the area is preserved as it stands, and the Raukumara Wilderness Area, zonings all of which limit and restrict the types and amounts of consumptive uses the land can be put to. There are also areas of freehold and Crown leasehold land, but these are largely outside the areas covered by the NWCO.

Raukumara Wilderness Area, of which the Motu forms an integral part, was first approved by the Minister of Forests as a 39,000 hectare zone "to maintain and emphasise the secluded character of the forest " [N.Z. Forest Service, 1984:13]. The area designated as the Raukumara Wilderness Area is notable as "the least modified large indigenous forest tract in the North Island" [Ibid:11]. It is bordered by steepland protection zones, with the Motu forming a barrier to the west. The river is seen as an essential part of the wilderness area, particularly as many of the recreational uses to which it is put are waterbased: rafting, canoeing, fishing as well as tramping and scientific research values. Conflict has arisen with hunters wanting to use helicopters and with some trampers as in a wilderness area no mechanised transport is permitted and neither are there any huts, paths, tracks or bridges.

As a test case for the 1981 legislation, the Motu River

Conversation Order was good. It illustrated the deficiencies wthin the legislation that were foreseen when the amendment was being drafted: that the process was lengthy and that the period between hearings could be shortened; that applications were restricted to particular bodies, often not those with the greatest interest in river protection; and that the order gives no protection to land, although in this case, some protection is given to adjacent areas, primarily as a result of its topography. It is mainly due to this fact that the NWCO has had few side effects on river users, as there are few users of the river other than those of a recreational nature.

The Motu conservation order was, therefore, at the preservationist end of the conservation spectrum, as, with there being no water rights in existence in the area to be protected, none had to be accounted for in drafting the order and there were no uses of water that would conflict with the NWCO. As such, the order did not necessitate the designation of minimum flows, as with the Rakaia, and provided for the preservation of the river in its natural state.

However, the conservation order was granted in time to prevent the damming of the river. The River had been seen as having great potential for hydro-electricity since the late 1970's, and only days before the wild and scenic rivers legislation was announced in 1979, water rights had been granted to the Ministry of Works and Development to begin investigations into the suitability of sites for dams on the Motu. By 1982, eight possible dam sites had been recognised (see Fig 5.3) at M5 or M8, M30 or M36, M53, M56 or M59 and near M77, each of which would result in the flooding of a large portion of the middle section of the river, resulting in the loss of the wild and scenic characteristics for which the river was later protected. A dam was also planned for one of the tributaries with a tunnel joining it to the

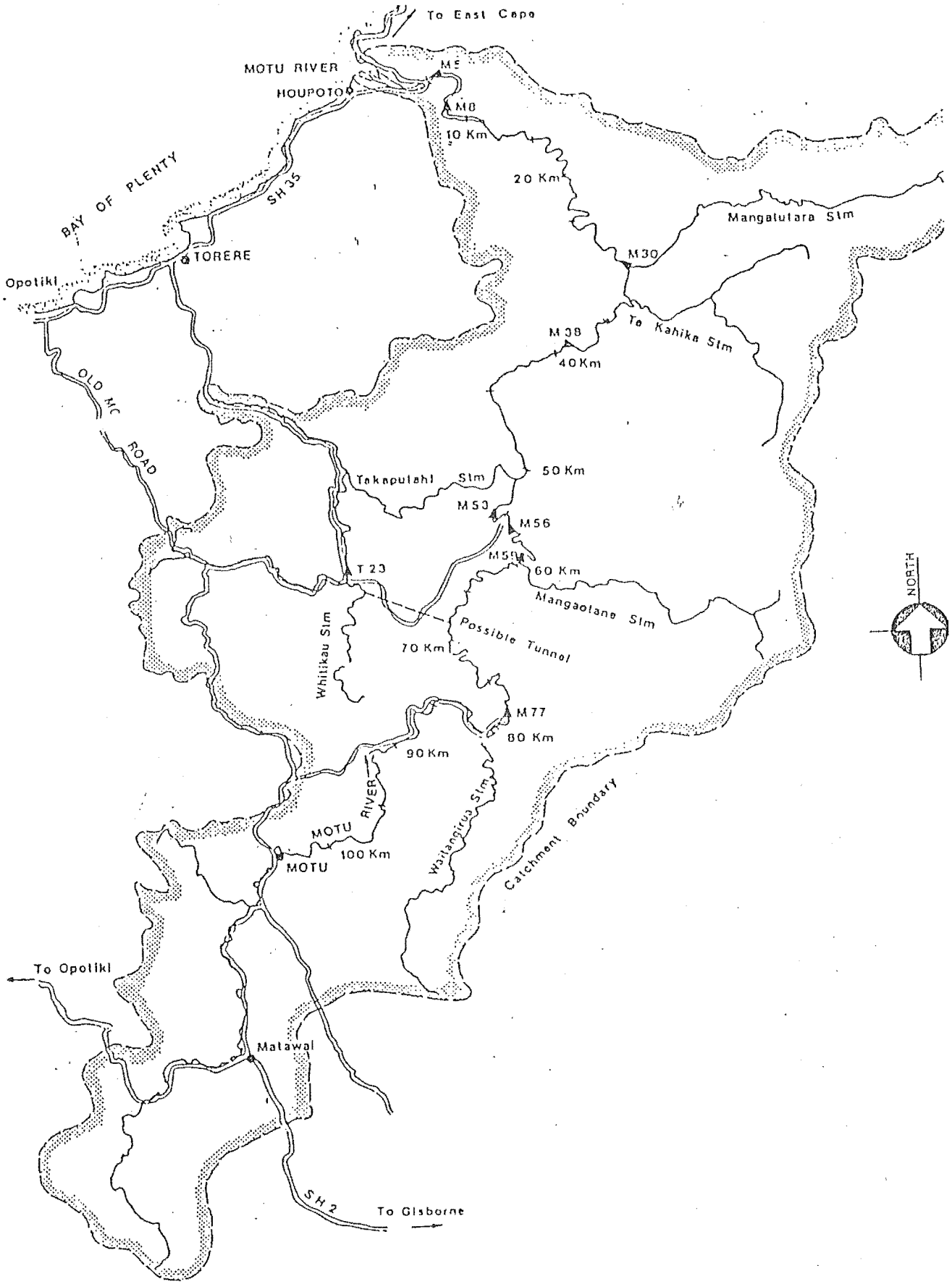


Fig 5.3 Motu River Power Investigations Possible Dam Sites
Source: Department of Conservation, Unpulished data

Motu above a dam at M53.

With the dam sites selected, and the initial stages of construction about to beginon some, and with the application for the NWCO having been made, the New Zealand Canoeing Association took the original water right application to the Planning Tribunal on the grounds that public notice of the water rights had been inadequate (one small notice, only in the Gisborne Herald, 28 days before the hearing, 28 days which included the Christmas and New Year vacations). The Tribunal found that not only was public notice inadequate but the water rights themselves were void. Water rights had been granted, but the map references were incorrect - they were not for the river but for a small area in the Raukumara Ranges, some miles away! The Tribunal had no power to change them and they would have to be amended and re-advertised. It was at this time that the Planning Tribunal also gave its decision on the NWCO. It thus became clear that future water rights would be difficult to get, so that scheme was dropped, although the river is still on the Ministry of Energy's list of rivers with good hydro potential.

The Motu conservation order thus proved that an order could "freeze" development on a river, and was made even more successful by the statutes of surrounding land. The NWCO also prevented the damming of the river. However in this instance, there was little opposition to the order, as there were very few who were adversly affected by it. This is not the case with the other case study in this chapter, the Rakaia River.

THE RAKAIA RIVER

The second case study concerns a river in a quite different

environment. The Rakaia is Canterbury's largest river, and like other rivers of the Plains has been favoured for both irrigation and hydro-electric power proposals. These, however, have been in conflict with its outstanding recreational and wildlife features, and, as a result, in 1983 an application was lodged for an NWCO to protect the wild and scenic characteristics of the river.

Hydro-electric proposals for the Rakaia date back to the turn of the century and its catchment already contains two small schemes at Coleridge (1913) and Highbank (1945). In 1976 the Southern Energy Group (a group of Technical Engineers), proposed a joint hydro-electricity/irrigation scheme, to make more direct use of the rivers development potential. This centred on raising the level of Lake Coleridge to increase its electricity generating potential and the construction of a series of canals downstream for irrigation and hydro purposes. Although this scheme was never seriously considered, the river remained in the Ministry of Energy's list of rivers with such development potential. Of rather greater consequences was a proposal in 1983 to use Rakaia River water for three massive irrigation schemes, covering a total area of 104,000 hectares, proposals born at a time of recurring drought on the central plains.

In order to protect the instream values of the river from the effects of such proposals, on the 10th June 1983 the Executive of the Acclimatisation Societies and three of its individual societies applied for a conservation order for the Rakaia. The applicants sought protection of the river from the source to the sea and minimum flows below the gorge ranging from 90.3 metres per second (m^3/sec) to 137 m^3/sec with prohibition of channelisation and a restriction on the issuing of water rights.

The initial hearing before a NWASCA committee took place in

March 1984 and the committee recommended that a draft NWCO be made covering the Rakaia and its tributaries above its confluence with the Wilberforce River and only the main river below that confluence. Minimum flows would be established below the gorge with one third of the minimum having to remain in the river and two thirds being permitted for abstraction. Damming the full flow of the river below the gorge would be prohibited, although partial damming would be permitted.

However, such a draft did not give the protection that the applicants wanted, so the original applicants appealed to the Planning Tribunal requesting that the minimum flows be increased and that the Wilberforce and Harper Rivers be included and that diversion of water within the river bed should be prohibited. It was also felt that the distribution of the water surplus to the minimum flows should be altered so that half remain in the river and half be permitted for abstraction. The Tribunal decision was given in May 1985 following the hearing the previous December and the objections to the draft order were upheld and changes made:

- the minimum flows requested originally were granted

- a restriction was placed on the amount of water permitted for abstraction for irrigation

- protection would be given to the Lake Heron wetland complex

- the river was recognised as important for salmon, jet boating and as a wildlife habitat

- partial protection was given to Lake Coleridge and the Wilberforce River

- damming of the river would be prohibited.

However, Federated Farmers, seeing this amendment as an even greater threat to the availability of irrigation water than the

original draft, appealed this decision to the High Court. This hearing, in 1986, was by way of an appeal on a question of law from the Planning Tribunal hearing and one at which legal argument only was permitted. The major question raised was whether or not the Tribunal was permitted to add to the order clauses even more restrictive than the original [NZLR, 1986:1]. No fresh evidence was permitted at this hearing. This Court in a decision given in November found that the Tribunal decision was invalid and that the original NWASCA draft order should stand and should also allow the sharing of water resources between competitive users following a multiple use philosophy. Nevertheless the High Court Judge granted an appeal for the Acclimatisation Societies to go before a panel of judges at the Court of Appeal as "there were important questions to be argued" [NZAC, 1987:90].

The matter then went to the Court of Appeal which unanimously upheld the Planning Tribunal decision and stated that the Tribunal can, in fact, add restrictive clauses to the draft order. In general, the High Court was seen to be wrong in its judgement. There were no further appeals available, so Cabinet approval came one year later, on 10th October 1988 and the NWCO finally came into force on 7th December 1988, five and a half years after the initial application.

The process outlined above illustrates that the problem concerning the length of the procedure lies not with the individual hearings, but the gaps between them. For example, it took seven months between the appeal being lodged with the Planning Tribunal and the actual hearing, and seventeen months between the Planning Tribunal decision and the High Court hearing. It is obvious that if such gaps could be shortened, then so would the complete process. However, with other hearings underway it could be impractical for such gaps to be

drastically shortened.

Thus, by 1988, the Rakaia was protected by a NWCO which declared that "the river and its tributaries include an outstanding national characteristic in the form of a braided river and an outstanding wildlife habitat, outstanding fisheries and recreational, angling and jet boating features"[NWCO, 1988:2]. Because of these characteristics the order states that all water in the Rakaia and its tributaries above the gorge and in Lake Heron shall be retained in its natural state, while the water in the Wilberforce and its tributaries is maintained in its existing state. Between the gorge and the sea, minimum flows have been set. When the flow at the gorge does not exceed the minimum flow, there will be no abstraction or diversion of water; when the gorge flow exceeds the minimum by less than 140m^3/sec, then the river flows shall not be reduced by more than half the excess and if the gorge flow exceeds the minimum by more than 140m^3/sec, the river flow shall not be reduced by more than 70m^3/sec. The minimum flows range from 139m^3/sec in December and 90m^3/sec in September. No dam will be permitted above the gorge and only below if it will not affect the restrictions placed by the NWCO. No water rights will be granted for any part of the river that will help the encroachment of agriculture onto the river bed. Rights will only be granted below the gorge if any discharge of water is clean, will not alter the river temperature and contains no toxic material.

As can be seen, the conservation order on the Rakaia River is somewhat different from that on the Motu River outlined earlier. Whereas the Motu order was a preservation order, restricting all development on the river, the Rakaia order covered a wider part of the conservation spectrum, allowing for multiple use but with the primary use being for preservation purposes. However, despite the provisions

outlined in this order, there was much opposition to it, particularly from farmers wanting irrigation water. However, such opposition failed in its objective for, with the granting of the order, irrigation and hydro-electricity proposals could not be developed (although with the reduction of Government subsidies to farmers in 1984, many such proposals could not have progressed anyway). This illustrates that although a conservation order has no direct control over the land adjacent to the river, it can affect the way such land is used, by restricting the amount of water available.

Thus these two conservation orders, although both created under the same piece of legislation, operate in totally different ways, one preserving, the other allowing for the consumptive use of some of its resources. But can they be taken as setting precendents for future conservation orders or illustrating the deficiencies of the wild and scenic rivers policy?

SUMMARY: SETTING THE PRECEDENTS OR ILLUSTRATING THE DEFICIENCIES?

Do these conservation orders set the precedents for future orders or merely illustrate the deficiencies in a system in need of reform? The answer is both. These case studies clearly illustrate the fact that there are deficiencies in the characteristics of the system.

However, equally as important, these two rivers also set the precedents for future conservation orders, illustrating how the policy works and the various stages involved. The Motu River was the first to be granted a NWCO, and was, in fact, intended as a test case for the then new legislation. As such, it was a success. It showed participants in the process, how it worked, especially what was required for hearings, and how evidence had to be presented and how

long hearings could be expected to take. Thus, when the next NWCO was applied for participants would be prepared and would know what would be needed. For example, the Acclimatisation Societies, when applying for early water conservation orders specified exactly what they were seeking (ie whether NWCO or LWCN, restrictions, minimum flows etc), in the actual applications. This allowed those opposing the order to see exactly what evidence was needed to oppose the Societies' case. In more recent applications, the Societies have merely applied for a "water conservation order in respect of" a particular river. Thus opposition to the order does not know exactly what characteristics the Societies' feel are worth preserving and must collect evidence on all aspects of the river, some of which may be irrelevant to the actual case.

The Rakaia River conservation order elaborated on this knowledge by going through more hearings to the Court of Appeal. It was thus shown how far in the judicial process a conservation order application could be taken, although showing that the procedure can take even longer than the first order. Of equal importance was the fact that it also proved that developers are not dominant in a river conservation policy. The order prevented a major river development proposal being constructed, both when the order was granted and for as long as it is in place. The Rakaia NWCO was not an appeasement to the conservation movement, as the wild and scenic rivers policy has been described earlier in this study. As was earlier suggested, the new Government (in 1984) was concerned with the actual protection of rivers, and was willing to see passed a conservation order that would be opposed by a large proportion of the local population.

It has been suggested that the wild and scenic rivers policy is far from perfect for achieving its goals and is in need of reform or

replacement. Surely the question must be asked whether such a policy is needed at all. The Rakaia may have been equally protected by minimum flows established by the Catchment Board, and it is unlikely that the Motu would have been developed, due to its topography. This issue will be dealt with in the concluding chapter.

CHAPTER SIX

WILD AND SCENIC DESIGNATION: IS IT NEEDED?

The aims of this concluding chapter are threefold. It will outline the extent of the wild and scenic rivers policy, now and in the future, outlining how many rivers are protected, where these are and, by using the National Inventory of Wild and Scenic Rivers, how many rivers are seen as potentially eligible for inclusion in the policy. The consequence of the present RMLR will also be examined. The extent of the threats to rivers will be examined. In earlier chapters it was discussed that the two major threats were hydro-electric development and irrigation schemes, with a third, waste disposal, being particularly relevant largely for rivers near urban centres. This chapter will discuss whether these actually constitute threats and, if so, whether they are increasing or declining in significance. The location of rivers developed for and seen as having potential for hydro-electric development will also be discussed. From this it will be examined whether or not a wild and scenic rivers policy is needed to protect water bodies from such threats, and if so whether the existing policy is the most suitable.

THE EXTENT OF THE WILD AND SCENIC RIVERS POLICY

Since the policy was introduced in 1981, four conservation orders have been issued, one for Lake Wairarapa and the others for the Motu, Rakaia and Manganui-a-te-Ao Rivers. However there are sixteen rivers which have had applications for them made for water conservation orders and all are at different stages in the process, with some about

to be finalised. Figure 6.1 lists those rivers and shows what stage of the process each is at. Three of these are being processed as National Water Conservation Orders, and twelve as Local Water Conservation Notices. One river, the Grey in Westland, is being processed both under a NWCO and a LWCN, as applications for both types of order have been made for parts of that river.

Thus twenty rivers and lakes will be protected under the policy within the next four or five years. As there were over 57 rivers in the Naitonal Inventory [NWASCA, 1984:17-23], if these orders at present under consideration are granted, then approximately one third of the rivers seen in 1984 as being eligible for inclusion in such a policy will have been protected. However the introduction states "this inventory should not be a fixed and final list ... it is envisaged that the Inventory will be modified by additions and deletions." In fact, one section of the Inventory includes "Fiordland rivers" stating that all rivers in that area be treated as one entity, and does not list specific rivers. As more information is made available about rivers in this area, individual ones will be listed. There are therefore, potentially many more than 57 rivers in the Inventory.

Therefore by 1989, the policy included rivers from both islands, with many others from all over the country at various stages within the conservation order process. Under the existing policy, it is likely that most of these orders, if granted, will have been done so, by 1995, illustrating that since the Rakaia conservation order hearings, more applications have been lodged, particularly by the Acclimatisation Societies, the Rakaia case having illustrated the potential scope of the procedure. However there is a possibility that the policy will not remain in its present form. The Resource Management Law Reform, currently in its final stages involves a reform

of the Water and Soil legislation which may include alterations to the wild and scenic rivers policy.

RIVER	NWCO/LWCN	STAGE IN DESIGNATION PROCESS*
Rangitikei	NWCO	awaiting Planning Tribunal hearing
Mohaka	NWCO	awaiting Ministerial Tribunal hearing
Ahuriri	NWCO	awaiting Planning Tribunal hearing
Motaura	LWCN	awaiting Planning Tribunal hearing
Buller	LWCN	awaiting decision from Ministerial hearing
Hautapu	LWCN	awaiting Ministerial Tribunal hearing
Makuri	LWCN	Submissions received on both of these
Mangatainoko	LWCN	but awaiting water authority hearing
Wainuiomata	LWCN	
Wairau	LWCN	awaiting Planning Tribunal hearing
Pomahaka	LWCN	local water authority just released its decision
Oreti	LWCN	awaiting water authority hearing
Aparima	LWCN	awaiting water authority hearing
Mararoa	LWCN	awaiting water authority hearing
Grey	NWCO/LWCN	two orders applied for different parts of the river. NWCO awaiting Planning Tribunal hearing & LWCN awaiting water authority hearing
Lake Tuakatoto	LWCN	awaiting decision from water authority hearing

* as at May 1989. SOURCE: Acclimatisation Societies [pers comm, 1989]

Fig 6.1 Rivers in the Designation Process
[Source: Acclimatisation Societies, personal communication, 1989]

It was stated by the Ministry for the Environment [personal communication, 1989] that the schedule of protected rivers to be introduced in a new Water and Soil Conservation Bill in 1986, was not introduced then because it was clear that the country's resource management statutes all were in need of reform. Instead many of the provisions of that bill "will be incorporated into the new Resource Management Planning Act (and) a schedule of protected waterways have been further considered" [Ibid]. Thus initially it seemed as though

the existing policy would be repealed and replaced by this schedule, a proposal supported by many environmental and recreational user groups. However, when the discussion papers were released, the only mention of a schedule was as one of "many possible approaches for the protection of instream values" [M.F.E., 1988:39]. The same paper outlined the revised policy for the protection of instream values, that will be introduced under the new legislation:

According to this paper a process similar to that for a NWCO (which can be improved to make it less cumbersome) should be retained. Applications could be heard by special tribunals appointed by the relevant Minister, with that Minister making the final decision and that decision being appealable to the Planning Tribunal. A Water Conversation Order could either preserve a body of water in its natural state or allocate the areas of water with the primary goal being the protection of instream values. This was what was introduced as a new policy, but as can be seen from the discussion in Chapters Three and Four, this process is no different from that already in existence. It therefore appears that the RMLR will make no changes to the wild and scenic rivers policy and the existing policy will have to be sufficient to protect the wild and scenic characteristics of rivers. But what are the rivers being protected from? The major threat to rivers is development for hydro-electricity and for irrigation schemes, but the question must be asked at this stage just how much of a threat these pose.

THE THREATS TO WILD AND SCENIC RIVERS

It is not sufficient just to say that threats exist and the wild and scenic rivers policy exists to protect rivers from these.

What must be examined is to what extent these actually pose threats and whether these threats are increasing or declining in importance. This section will concentrate on hydro-electric and irrigation development.

Rivers have been used for irrigation purposes since late last century. The first irrigation races were built on farms near the Clutha river in 1865. By the turn of the century there were 12 community schemes in Central Otago, financed by the Government. In the 1930s attention was drawn to the Canterbury Plains, with schemes on the Opihi and Waitaki Rivers, again financed by the Government. In 1960 policy was changed again and under this form development was to be included in scheme planning and also be eligible for financial assistance by the Government. Costs of a new scheme would be shared between the Government and farmers. Single farm development has proceeded independently from Government assistance.

Irrigation has been a constant threat, until recently to all rivers flowing through farmland where the climate is such that there is insufficient water to irrigate the land. "Irrigation reduces the risk of drought, doubles the output of traditional farming products and provides the opportunity to diversify into more intensive types of land use" [Ministry of Works and Development, 1984.1]. However, the benefits of irrigation are not limited to the farmer. Increased production requires more labour on the farm as well as in service industries.

There are three types of irrigation and all involve the abstraction of water from rivers and from beneath the ground. Surface irrigation usually involves direct river abstraction and border strip schemes most popular in flat areas such as Canterbury. This form is most widely used for pasture. Sprinkler irrigation, involving the spraying of water over wide areas of farmland is more suited to

cropping farms. Trickle irrigation has only recently begun to be used on farmland having largely been used for glasshouses. These can be fully automated with no use of labour. It is widely used by horticulturists.

Thus with such a diverse range of irrigation methods which can be used over all types of terrain and farmland, and with Government assistance available, and with the benefit of irrigation being far wider than only for the individual farmer, irrigation posed a major threat to the wild and scenic characteristics of many of New Zealand rivers, in particular due to the reduced flow of those rivers used for irrigation. However with the election of the Labour Government in 1984 this threat was largely removed. The first budget of the new Government was aimed at reducing or removing a wide range of Government financed assistance as well as increasing charges for state owned enterprises and services. "Agriculture has borne the brunt of these measures" [M.W.D., 1986:7]. The results were as follows: schemes which did not have approval in November 1984, became eligible for reduced grants, schemes in the approval process required recalculation of water charges and schemes approved by November 1984 were eligible for the full pre-budget grant as long as they continued to show an economic return. Schemes under construction would face an increase in water charges.

Thus, since 1984, although irrigation subsidies still exist, they have been much harder to get, and are only granted if the scheme will made a profitable return. The Ministry of Works and Development (MWD) [Ibid:4] stated that if schemes "are needed and if they are profitable to the farmer and the nation, and they allow product diversification and employment, then there are good prospects for getting Government support". However support will only be given if

farmers can bear the cost of 65% of the capital and other development works, together with higher interest rates for any loans. These restrictions make it virtually impossible for any large irrigation schemes such as those proposed for the Rakaia to be constructed. No such large schemes have been proposed since 1984 because of these prohibitive costs, although one scheme, the Mangatapere, was granted funds in 1986, not under the 1984 policy but an earlier 1982 one, which allows for grants to subsidise 70% of the works, but with higher water costs to recover the initial investment. However, this is not common practice and the 1984 policy is dominant, thus resulting in a significant decline of irrigation schemes as a threat posed to wild and scenic rivers.

Just as irrigation has declined as a threat to such rivers, so too has the threat of hydro-electricity generation, and for similar reasons, particularly associated with cost. Nevertheless, the threat still exists, and many rivers today are still recognised as having hydro-electric potential. In 1978 a list of rivers with "large scale hydro development potential" was published [Ministry of Energy, 1978], a list which remains largely unaltered in the late 1980s. Six rivers were recognised in the North Island as being able to produce a total of 5520 Gigawatt hours per annum (GWh/year), including a possible 1300 GWh from the Motu River, but which is now unlikely to be developed unless the conservation order is revoked. Eight individual rivers are targetted in the South Island, however with a total of 22,800 GWh/year. Targetted as a group were the rivers of South Westland and Fiordland seen as being able to produce 3000 GWh/year, giving a total for both Islands of 31,320 GWh/year. These rivers are mapped in Figure 6.2. With this added to the 23,806 GWh from power stations already in operation and under construction, and an estimated 3000 GWh from

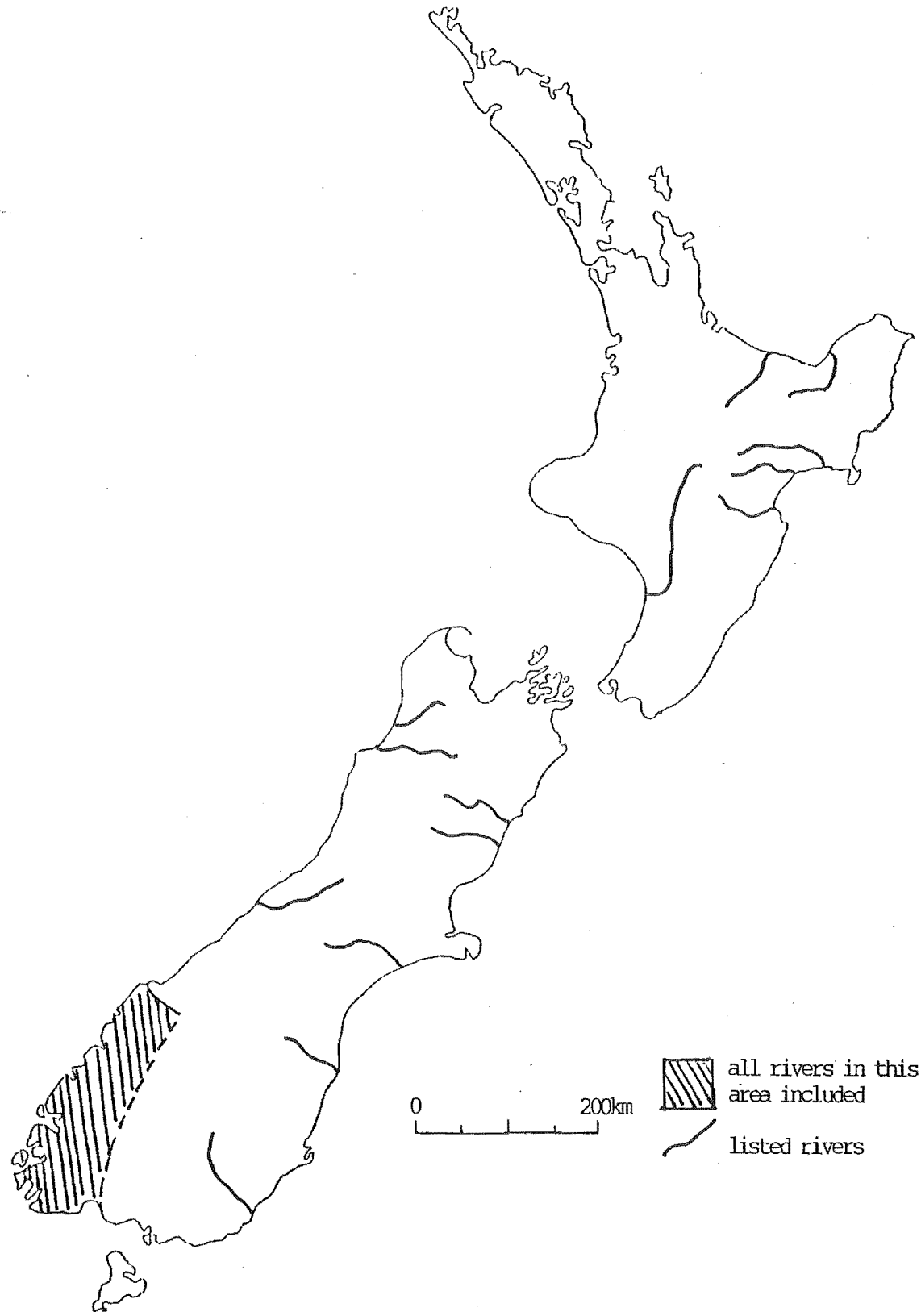


Fig 6.2 Rivers listed with Hydro Electric potential
Source: Ministry of Energy, 1978:109-110

potential small scale developments gives a total potential hydro-electric power output of 58,126 GWh/year is available [M.O.E., Ibid: 109-110].

Thus there are many rivers with great hydro potential as yet untapped in New Zealand, both on a large scale and from small scale proposals (ie 50 GWh/year and less) which if all developed would pose threats to many rivers which also appear in the 1984 National Inventory, although some, such as the Waitaki and Clutha, aleady have undergone major development. However over recent years, the cost of developing rivers for hydro-electricity has become excessive. An example of this cost can be seen with the Clyde dam on the Clutha River. Construction of the dam began in 1982 with $12.5 million being granted five years earlier for preliminary works, with the dam to be in full commission by October 1985 [Christchurch Star, 1989]. By 1990, the lake will still not be filled and it is expected, because of extra work that had to be carried out to strengthen the dam, that the final cost will be in excess of $1 billion. In fact it was because of such enormous costs that the present Government abolished plans to develop the upper Clutha as well.

By the early 1970s, when the Clyde dam was still in the planning stages, cheaper options for generating electricity were being explored. By 1978 hydro generation, although still by far the greatest source of electricity was declining in importance rather than increasing, as alternatives were recognised and more viable options introduced. The Ministry of Energy [Ibid] stated that as well as hydro-electricity, oil, coal and natural gas provide viable sources of energy. Yet these resources are not renewable, and are no cheaper than hydro-electricity. Natural gas has been used to generate energy on a large scale since the discovery of the Maui gas field in 1969. After

this discovery was made, it was realised that tremendous capital input was needed and that this could only be justified if a high rate of cash inflow was assured. With electricity forecasts clearly demanding the construction of more power stations, and with a coal-powered station already under construction in New Plymouth, Maui gas offered an alternative fuel for electricity generation and with no other market available to support the development of the Maui field it was decided to use the oil for electricity generation. The New Plymouth power station was redesigned to burn Maui gas.

Thus, natural gas rose in importance as a generator of electricity as hydro generation declined. There were other alternatives to hydro, and it was because of the increasing cost and limited availability of conventional sources of energy (including hydro power) that it became "necessary to consider alternative technologies which could provide additional or more efficient supplies of energy" [Ibid:53]. These alternative technologies included nuclear power, although this would involve high expenditure as it would have to be based on imported uranium, solar energy, biomass, (the use of any form of plant matter to provide electricity, primarily through fermentation). Also considered were wind powered electricity generation and ocean powered schemes. These need not all be discussed here. It is sufficient to note that alteratives to hydro-electricity are numerous, and many are also cheaper.

Thus the threats to rivers of irrigation and hydro-electricity generation have declined over recent times. However, when the location of the wild and scenic rivers listed in the 1984 National Inventory is examined (see Fig 6.3) it is possible that these threats do not affect many of these rivers. Many of these rivers are in remote areas (such as Fiordland), areas often unproductive for agriculture. It is likely

therefore, that such rivers are safe from the threat of irrigation development. Exactly the same is true for hydro-electicity. Many of the wild and scenic rivers are in areas totally unsuitable for the development of hydro-electricity schemes because of the rugged terrain through which they flow.

Thus, although the two major perceived threats to wild and scenic rivers, irrigation and hydro-electricity proposals, still potentially exist, their significance has declined in recent times due to the reduction in Government subsidies in the case of irrigation and enormous costs of hydro development and the availability of cheaper options. However many of the rivers in the National Inventory of Wild and Scenic Rivers appear not to be greatly affected by these threats as they are located in such remote areas.

CONCLUSION: THE WILD AND SCENIC RIVERS POLICY: DO WE NEED IT?

If, as discussed above, the threats to wild and scenic rivers have declined over recent years or if these threats do not affect many of the rivers in the National Inventory, is there therefore any need for a policy to protect rivers from the perceived threats? The answer is that such a policy is needed, for several reasons:

Firstly, the threats above were discussed as declining in importance. However, they still pose a potential threat as there is nothing that prohibits the construction of dams and irrigation schemes. It is merely that, at present, cost restricts such developments. Should a Government decide to again increase the subsidies to farmers then many wild and scenic rivers could be affected and if hydro power generation becomes more viable than the existing alternatives, this would have the same affect. Thus there is a distinct possibility that

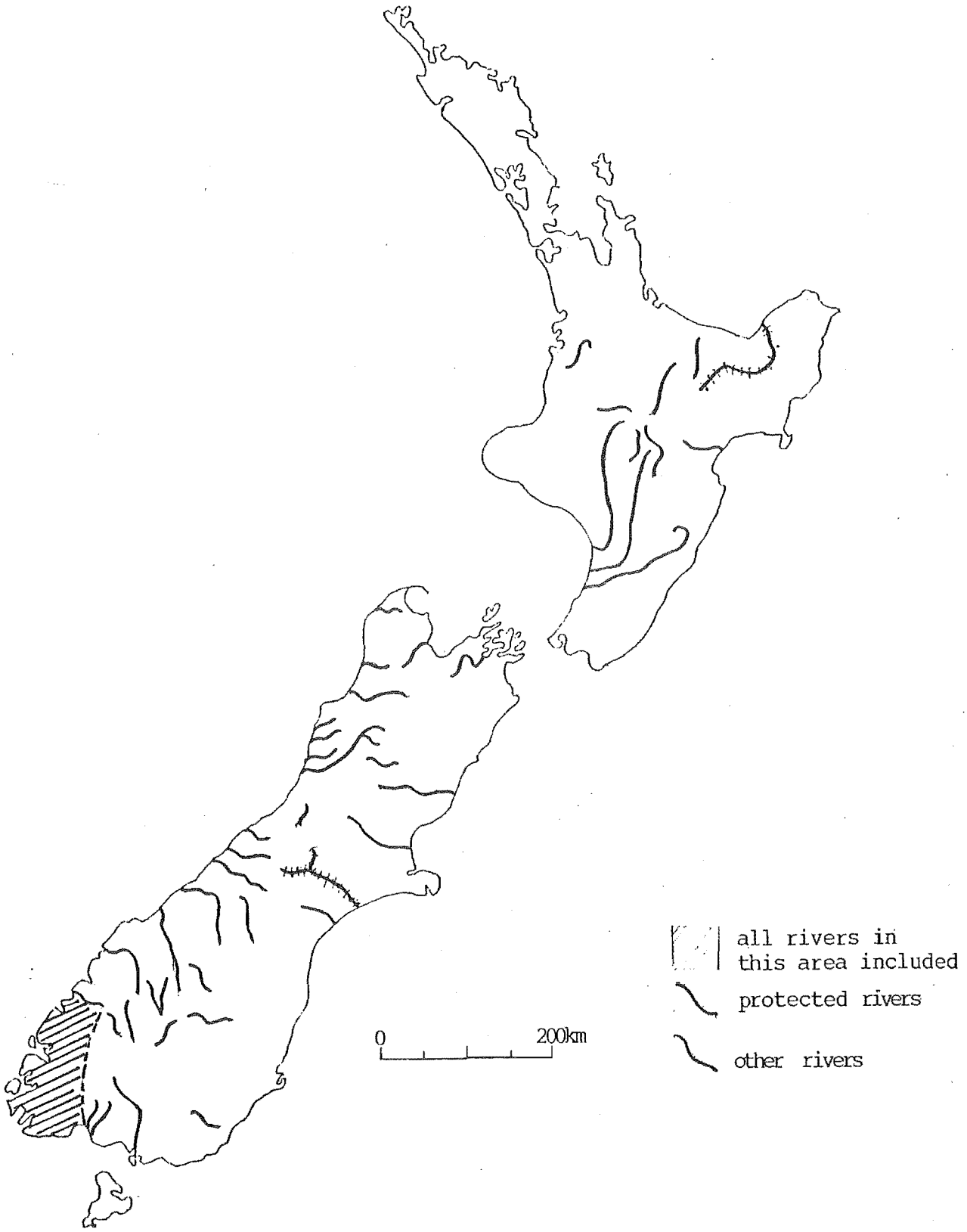


Fig 6.3 Rivers in the 1984 National Inventory of Wild and Scenic Rivers

those threats described above as in decline, may again in the future increase in significance.

Secondly, merely because the threats of irrigation and hydropower generation have declined in recent years, it does not indicate that other threats may not rise to affect rivers. For example, the threat of waste disposal may increase as urban areas spread out and previously rural waterways flow through urban areas. Even with methods of electricity generation other than hydro-electricity, large quantities of water can often be required as a coolant.

Thus there is a need for the existing policy, but Fig 6.3 also illustrates that there is a need for an extension of this policy. As can be seen from the map, the majority of the country's wild and scenic rivers are in remote, inaccessible areas, some distance from major urban areas. However it is rivers near metropolitan areas that are most frequently used for recreational purposes. The majority of picnicers, anglers and jet boaters come from nearby urban areas. This is one reason why the Rakaia River is so heavily used. Despite this most rivers used for recreational activities are not protected by any policy, and this needs to be done to ensure that the recreational values of such rivers. These rivers are not included in the National Inventory because their characteristics are not seen to be of such a quality to warrant their protection. It appears therefore that a wild and scenic rivers policy can do little more than protect a very small proportion of the nation's total river stock for the use of a very small percentage of the population (ie those that can get to them).

There is, therefore, a need not only for the existing wild and scenic rivers policy but also a recreational rivers policy that protects not only rivers with "outstanding" recreational values, but

also rivers with good quality recreational characteristics yet which appear not to qualify for wild and scenic protection under the existing policy. As was outlined in earlier chapters, this existing policy has many deficiencies which will not be repeated here. If such deficiencies were remedied then the policy would be more efficient in achieving its objectives. However, despite promises of amendment in 1985, with a schedule of protected rivers, such deficiencies still have to be remedied. This may be achieved by the RMLR but at present it looks unlikely. Whether New Zealand's wild and scenic rivers policy is altered, amended, replaced or repealed, so that its objectives are more easily attainable, some time in the future, remains to be seen.

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